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HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE 1757th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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GENERAL COMMENTS OF THE COMMITTEE

Draft general comment on article 12 of the Covenant

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-42911 (E)

The meeting was called to order at 3.10 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 5)

Draft general comment on article 12 of the Covenant (CCPR/C/21/Rev.1/Add.9)

1. The CHAIRPERSON reminded the Committee that it had adopted paragraphs 1 to 10 of the draft general comment on article 12 (CCPR/C/21/Rev.1/Add.9) on second reading at its sixty-fifth session. She invited Mr. Klein, Rapporteur for the draft general comment, to introduce draft paragraph 11.

Paragraph 11

2. Mr. KLEIN (Rapporteur) said that paragraphs 11 to 18 dealt with restrictions that could be placed on the rights recognized in article 12, paragraphs 1 and 2, pursuant to paragraph 3 of the article. Paragraph 11 outlined the scope of paragraph 3. The reference in brackets at the end of the paragraph should be amended to read "see para. 18 below".

3. Ms. EVATT proposed deleting the word "these" before "restrictions" in the last sentence.

4. It was so agreed.

5. Paragraph 11, as amended, was adopted.

Paragraph 12

6. Mr. KRETZMER, referring to the last sentence of paragraph 12, said that article 12, paragraph 3, did not establish requirements for legislation restricting rights but stipulated that the restrictions themselves must be consistent with other rights recognized in the Covenant. He suggested that it should be amended to read: "If the restrictions provided in the law are not in conformity with the requirements of article 12, paragraph 3, they would violate the rights guaranteed by paragraphs 1 and 2".

7. Mr. WIERUSZEWSKI said that paragraph 12 contained two ideas, one concerning the form of restrictions and the other concerning their character. The formal requirement was that restrictions should be applied by statute. But the definition of a law or of an executive or administrative decree or order was not necessarily the same in different legal systems. The second requirement was that restrictions should be admissible under article 12, paragraph 3.

8. Mr. KLEIN (Rapporteur) said that the implication of the last sentence was that, even where a law was enacted, it could only impose such restrictions as were admissible under article 12, paragraph 3. Paragraph 12 was basically designed to set the stage for the points made in the subsequent paragraphs.

9. Mr. SOLARI YRIGOYEN inquired about the status of restrictions based on racial, religious or other forms of discrimination.

10. Mr. ZAKHIA said that the term "administrative decree" was a misnomer. Decrees were issued only by the Executive.

11. Mr. KLEIN (Rapporteur) suggested replacing "executive or administrative decrees or orders" by "executive decrees or administrative orders".

12. The question of discriminatory restrictions was addressed in paragraph 18 of the draft general comment. Such restrictions were, of course, inconsistent with other rights recognized in the Covenant.

13. Mr. LALLAH said that, under the common-law system, executive or administrative decrees or orders could also be described as "laws". They constituted "delegated legislation", i.e. rules, regulations or orders whose purpose was to implement a law enacted by Parliament. He proposed the following new version of the first two sentences of the paragraph: "Legislation itself has to provide the grounds upon which these rights may be restricted. Mere executive or administrative action not taken in pursuance of the law does not meet this standard". He wondered whether, under other legal systems, executive decrees were issued independently, i.e. not in pursuance of a basic law, and whether they could be challenged on the principle of ultra vires.

14. Mr. AMOR expressed support for Mr. Kretzmer's proposed amendment. He also proposed amending the first sentence of the paragraph to read: "The law itself, within the strict limits laid down by article 12 of the Covenant, has to establish the conditions under which rights may be limited".

15. In view of the differences between legal systems, he suggested replacing "executive or administrative decrees or orders" by "administrative regulations and decisions".

16. Mr. ZAKHIA supported Mr. Amor's proposed amendment to the second sentence.

17. Mr. KRETZMER said that, in the legal system with which he was familiar, the term "law" denoted a statute of Parliament and not delegated legislation. He proposed deleting the second sentence.

18. Mr. YALDEN supported the proposal to delete the second sentence.

19. Mr. KLEIN (Rapporteur) said that the requirement in article 12 that restrictions should be provided by law had a protective function for the individual. No member of a country's Executive could restrict individual liberties; only the Legislature was empowered to take such action. He agreed with Mr. Kretzmer's proposed amendment to the last sentence.

20. Mr. BHAGWATI said that laws could be enacted by Parliament or, for example, by presidential decree. He suggested the following amended version of the second sentence: "Orders or decisions which do not have the force of law do not meet this standard".

21. Ms. CHANET considered that it would be unwise to use terms that had contradictory meanings in different legal systems. In the area of movement of

persons, a law imposing restrictions might delegate authority to an administrative body to apply the law to individual cases, say in the interests of law and order. When a road was closed to traffic, for example, it was for the administrative authority to determine the scope of the restriction.

22. The third sentence of paragraph 12 made the key point that States should inform the Committee of the legal norms on which restrictions were founded so that it could determine whether they complied with the provisions of article 12.

23. Ms. EVATT said that restrictions should be imposed by laws of general application that specified the criteria to be applied in limiting rights. The point was that executive or administrative orders or decrees must fall within the scope of such laws of general application; if they did not, they would not meet the article 12 standard.

24. The CHAIRPERSON said that, under the legal system with which she was most familiar, all laws were of general application.

25. Mr. AMOR said that the law could be oppressive in a State that was not governed by the rule of law. That was why he had proposed his earlier amendment to the first sentence of paragraph 12.

26. Mr. KRETZMER said he could not support Mr. Amor's proposed amendment. The first sentence of paragraph 12 should simply state that restrictions must be enshrined in a law. The requirement of conformity with article 12 should be addressed separately.

27. Mr. KLEIN (Rapporteur) raised the hypothetical case of a State in which the President was empowered by the Constitution to expel an individual. He submitted that such acts should not be at the discretion of an individual office-bearer or an administrative body and that the empowerment of a dictator to enact legislation was incompatible with the Covenant. Restrictions on recognized rights could be imposed only by an authority that met the standards of a law-enacting body.

28. Ms. CHANET said that definitions of law were not identical, even in democratic countries. Decrees in certain democratic countries had the force of law and laws or even constitutions in certain dictatorships could be just as oppressive as administrative decisions by subordinate officials. The Committee's only option was to point out to States parties that a particular piece of legislation failed to meet the criteria laid down in article 12.

29. Mr. KLEIN (Rapporteur) said that, although he was not very happy with the idea of deleting the second sentence, he would not obstruct any consensus by pressing his point. The sentence made sense in the context, since States parties were requested to specify the legal norms upon which restrictions were founded. He was particularly concerned about States parties being allowed to make their own interpretation of the terms of the Covenant.

30. Mr. AMOR said he would prefer the second sentence to be retained.

31. Mr. KRETZMER said he was in favour of deleting the second sentence. However, he inquired whether there was any support for Ms. Evatt's implied amendment to the first sentence, namely that "The law itself" should be replaced by "A law of general application".

32. Mr. ZAKHIA shared Ms. Chanet's views: it would not be advisable to attempt to define what exactly had the force of law in each State party, for that would only complicate matters further. Any legislation, irrespective of its source, must be in conformity with the provisions of article 12. As to Ms. Evatt's point, in French the term "la loi" implied a law of general application.

33. Mr. YALDEN said he was not in favour of Ms. Evatt's amendment since, although it would be acceptable in the bilingual (French/English) Canadian context, it would undoubtedly pose problems for other States parties where different legal systems and languages were used.

34. Ms. CHANET said that, while allowances must be made for diverse legal systems, there must be some consistency between the different language versions of the text. She did not consider that Ms. Evatt's amendment could do much to resolve the problem under discussion.

35. Mr. POCAR said that it hardly seemed the time or place to engage in such lengthy, albeit interesting, discussion on the definition of the law. The Committee had adopted other general comments containing similar provisions without such ado. It would be more appropriate to take up such matters when considering the general comment on article 2, which dealt specifically with legislative measures. Thus, for the sake of simplicity, he would prefer to retain the original wording of the first sentence.

36. The CHAIRPERSON said she would take it, unless she heard any further objection, that the Committee wished to retain the original wording of the first and third sentences, to delete the second sentence and to amend the last sentence along the lines suggested by Mr. Kretzmer.

37. Paragraph 12, as amended, was adopted.

Paragraph 13

38. Mr. KLEIN (Rapporteur) said the purpose of paragraph 13 was to ensure that restrictions provided for by law permitted under article 12, paragraph 3, did not jeopardize the basic rights guaranteed by paragraphs 1 and 2 of the same article. In practice, some States parties placed so many restrictions on the law that it was virtually bereft of meaning, and what should be the exception became the rule.

39. Mr. ZAKHIA suggested that the French text of the last sentence should be aligned with the English and Spanish versions by replacing the words "toute latitude" by "pouvoir discrétionnaire".

40. Mr. POCAR, referring to the first sentence, suggested that "imposing" should be replaced by "providing for".

41. It was so agreed.

42. Ms. CHANET sought clarification regarding the second part of the first sentence, in particular the purpose of the statement "the relation between right and restriction, between norm and exception, must not be reversed". She also queried the sense of the last sentence, suggesting that either the way in which restrictions were applied should be elaborated upon or the sentence should be deleted.

43. Mr. KLEIN (Rapporteur) explained that the latter part of the second sentence served to emphasize the principle set forth in the first part, namely that restrictions provided for by law must not be so broad that the exception became the rule. In his view, the last sentence did make sense in the context, for if the law providing for restrictions conferred unfettered discretion on those charged with their execution, then the rights protected by article 12, paragraphs 1 and 2, could be undermined.

44. Mr. WIERUSZEWSKI suggested that "norm" should be replaced by "rule" in the first sentence. He also shared the disquiet expressed by Ms. Chanet about the last sentence.

45. Mr. ZAKHIA considered the last sentence necessary, for undeniably it was the practice of many States parties to make laws sufficiently broad for the administrative or political authorities to exercise substantial discretion. It should therefore be emphasized that restrictions must be sufficiently precise to avoid such situations.

46. Ms. EVATT also agreed on the importance of the last sentence, but felt that it belonged in paragraph 12.

47. Mr. BHAGWATI endorsed Ms. Evatt's remarks. It was important to make a statement about unfettered discretion, since it could lead to abuse.

48. Mr. LALLAH said he had been under the impression that paragraph 13 was about the implementation of the law. However, surely the word "unfettered" should not apply to "discretion" but to the law itself. In any case, discretion was not a wholly negative concept. The person responsible for applying the law must be allowed to exercise some discretion in certain circumstances, for instance when there was no threat to public order. He would therefore have no objection to the deletion of the last sentence.

49. Mr. AMOR suggested that paragraph 13 could be considerably simplified by some rearrangement of the following three basic ideas which it contained. First, restrictions should not impair the essence of the rights protected by the Covenant; second, such restrictions, which were exceptions to the rule, should be limited; third, the restrictions must not be applied in an arbitrary fashion. An illustration of where restrictions provided for by law undermined the basic rights enshrined in article 12, paragraphs 1 and 2, was in Viet Nam, where the competent authorities had extraordinary discretionary powers to refuse and grant residence permits.

50. The CHAIRPERSON, speaking in a personal capacity, said that Mr. Amor's third basic idea did not quite correspond to the last sentence of the

paragraph. It was not a question of too much discretion in the application of restrictions provided for by law, but rather that the law should not confer unfettered discretion on those responsible for their application. Evidently some confusion had arisen during the discussion owing to the application aspect. She suggested that the text would read much more clearly if the words "and applying" were deleted from the first sentence.

51. Ms. CHANET agreed that the question of application had caused some confusion. Now that had been cleared up, and since the Committee had decided the main focus of paragraph 12 should be whether restrictions provided for by law were in conformity with requirements of article 12, she saw no reason why the two paragraphs needed to be kept separate as they dealt with similar issues.

52. Ms. EVATT said that a more positive element should be introduced in the last sentence to make for a more balanced statement. She suggested the addition of the words: "should include precise criteria".

53. Mr. KLEIN (Rapporteur) welcomed the idea of merging paragraphs 12 and 13. Taking into account the amendments proposed, the second part of new paragraph 12 should now read: "In adopting laws providing for the restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right (cf. art. 5, para. 1); the relation between right and restriction, between rule and exception, must not be reversed. The laws authorizing the application of these restrictions should include precise criteria and may not confer unfettered discretion on those charged with their execution."

54. Following a further brief exchange of views with Ms. Chanet regarding the last sentence, the CHAIRPERSON said she would take it that the Committee wished to adopt the proposal to combine paragraphs 12 and 13 on the basis of the amended text for the latter read out by Mr. Klein.

55. It was so agreed.

Paragraph 14

56. Mr. KLEIN (Rapporteur) explained that the paragraph was intended to convey the idea that restrictions should be necessary in order to serve a permissible purpose, and should also be governed by the principle of proportionality.

57. Ms. EVATT proposed that in the second sentence the words "the least intrusive instrument amongst those intended to achieve the desired result" should be amended to read "the least intrusive instrument amongst those which might achieve the desired result".

58. Ms. CHANET proposed that in the same sentence the word "overriding" (before "interest") should be deleted.

59. Mr. KLEIN (Rapporteur) said he could accept those amendments.

60. Mr. POCAR said he wondered whether the example of refusal of a passport cited in the last sentence did not more properly belong in paragraph 15, which required that any proceedings relating to the restriction of rights should be expeditious. It did not seem to him to be directly linked to the principle of proportionality.

61. Mr. KLEIN (Rapporteur) said the example had been intended to illustrate the requirement in the previous sentence that restrictive measures should be proportionate to the overriding interest to be protected.

62. The CHAIRPERSON pointed out that now the word "overriding" had been deleted, the meaning of the previous sentence had changed and the example given became less relevant. She suggested that the last sentence should be deleted.

63. Paragraph 14, as amended, was adopted.

Paragraph 15

64. Mr. KRETZMER suggested that in the light of the amendment made earlier to paragraph 12, the words "by the legislature in framing the restrictions" should be replaced by "by the law that frames the restrictions".

65. Mr. KLEIN (Rapporteur) said that wording would be acceptable.

66. Paragraph 15, as amended, was adopted.

Paragraph 16

67. Ms. EVATT noted that the point made in the first sentence had already been covered. The paragraph should establish that there must be a clear link between the criteria governing the imposition of a restriction and the necessity for the restriction in order to serve an authorized purpose. In her view, the example given, stating that a certain restriction imposed on a holder of "State secrets" would be incompatible with article 12, was too imprecise.

68. Mr. KLEIN (Rapporteur) said the examples given were intended to be illustrations of cases where precise criteria were in fact lacking. Thus, although restrictions on the freedom of movement of holders of "State secrets" could be subsumed under "national security", and requirements for internal residence permits could be subsumed under "public order", it was not clear whether they really served the purpose intended. The paragraph contained two ideas: first, the restrictions should not be too broad, and second, they should be necessary to protect the interests at stake.

69. Mr. KRETZMER said the example given of a requirement for internal residence permits was not relevant to the need for precise criteria: the question was rather whether such a requirement was in fact legitimate, even if it was claimed that it was in the interests of public order. The issue of legitimacy should be dealt with separately from the issue of precise criteria. With reference to the penultimate sentence, he did not think it was

appropriate in the general comments to tell States parties what they should do. He suggested that "are unacceptable" or " do not meet the criteria" should be substituted for "should be abolished".

70. Paragraph 15 rightly distinguished between the law itself and the way the law was administered. However, he was not clear what point was being made in paragraph 16 by citing the example of a holder of "State secrets". Was it implied that such a person should be specifically defined in law or that he should be specifically defined in judicial decisions applying it?

71. Mr. KLEIN (Rapporteur) said his meaning had been that it was not enough to claim that a right could be restricted in the interests of "national security", and to leave it to the Administration to decide whether or not a particular case should be subsumed under that term. There should be precise criteria in order to enable the Administration or the Judiciary to execute the law: it was not sufficient simply to invoke concepts such as "national security". However, he agreed that it was perhaps better not to try to combine two different ideas in the same paragraph. The first two examples given, which concerned the need for precise criteria, could be added at the end of paragraph 13.

72. The CHAIRPERSON said that for her part she had great difficulty in agreeing to the third sentence beginning "States should instead specifically define the groups whose departure would pose real risks to national security". The penultimate sentence, citing the example of restrictions imposed on vagrants, should be deleted, since it was not a question of whether such laws were open to abuse but rather of whether they were admissible in the first place.

73. Ms. EVATT said the aim of the paragraph was to emphasize the importance of using criteria sufficiently precise to show that application of a restriction was in conformity with article 12, paragraph 3, of the Covenant and was necessary to serve an authorized purpose. Regarding the example of holders of "State secrets", it would be better to require that States should specifically define the circumstances in which the departure of certain persons would pose a threat to State security.

74. Mr. KRETZMER said that, in his view, paragraph 16 laid down standards which States would find themselves unable to comply with. It was impossible for the law to foresee all circumstances that might arise, and it was therefore particularly important to insist that unfettered discretion should never be allowed in its application. He himself would see nothing wrong with a general law allowing restrictions to be imposed in the interests of national security, provided that every case in which that law was applied was made subject to judicial review to ensure that it met the necessary criteria. That was the approach followed by most States, since it would not be possible in practice to define every circumstance in which such restrictions could be imposed.

75. Mr. AMOR agreed that the law could not regulate every aspect of life. The difficulty arose from the fact that the Committee was dealing with restrictions justified by reference to abstract concepts, the meaning of which varied from country to country. What was needed was to ensure that concepts

such as "national security" were not applied arbitrarily or used as an alibi to bolster a particular regime. The State party should be required to demonstrate that the restrictions were necessary and governed by precise criteria, it being understood that precision in such a context had its limits.

76. Mr. KLEIN (Rapporteur) said his intention in paragraph 16 had been to require States parties to be more diligent in framing laws which invoked such concepts.

77. Ms. CHANET said the reference to "State secrets" should be deleted. The concept was a totalitarian one, and the Committee should not appear to be giving it recognition by including it in the text. In the same way, reference should not be made to "anti-social elements": the Committee should not draw attention in its general comments to wrongful actions perpetrated by States, even to condemn them, but should rather emphasize basic principles.

78. Mr. SOLARI YRIGOYEN considered that the paragraph was too long and the examples given too imprecise. It was difficult, if not impossible, to define exactly what the law should be in matters of national security. For instance, the term "terrorist activities" could be interpreted in different ways in different countries, according to the law in which such activities were defined.

79. Mr. KRETZMER proposed that the paragraph should include a sentence along the following lines: "Although the law may often use general terms in defining permissible restrictions, when applied in specific circumstances the precise criteria requiring restriction of the right must be defined, and those criteria must meet the test of necessity and the requirements of proportionality."

80. Mr. ZAKHIA said that the concept of ordre public contained a subjective element which could vary from country to country. The examples in paragraph 16 could be construed as an expression of Eurocentricity on the part of the Committee. He preferred the wording proposed by Mr. Kretzmer.

81. The CHAIRPERSON did not agree with the view that the ordre public criterion was variable from country to country.

82. Mr. LALLAH said that he was inclined to agree with Mr. Zakhia. The examples cited in the paragraph were mostly drawn from the practice of totalitarian systems which had now disappeared. A text along the line suggested by Mr. Kretzmer would be more appropriate.

83. Mr. KLEIN (Rapporteur) said that he had thought it useful to include examples drawn from the Committee's own jurisprudence. However, if members preferred a more general formulation, he was quite prepared to accept Mr. Kretzmer's text, which expressed very much what he himself had wanted to say. The paragraph would then read:

> "Although the law may often use general terms, in defining permissible restrictions when applied in specific circumstances the precise

criterion under which the restriction is required must be provided. These criteria must meet the necessity test and the requirements of proportionality."

84. Ms. EVATT said that she could not agree to that formulation, which suggested that it might be up to an administrative officer, or even the Judiciary, to work out the criterion for applying the restriction. The law should make it clear in advance how the criterion was to be applied, and the criterion must be sufficiently precise to show that its application was in conformity with article 12, paragraph 3.

85. Mr. KRETZMER considered that any attempt to define precise standards in such areas as, for example, national security or public order was bound to prove impracticable and, indeed, counter-productive. New circumstances could arise at any time and it was impossible to legislate in advance for each individual case.

86. Mr. LALLAH agreed with that view.

87. Ms. CHANET said that she would be prepared to endorse the wording proposed by Mr. Kretzmer provided it was made quite clear that the restrictions referred to were not necessarily of an individual nature but could extend to whole sectors of the population.

88. Mr. BHAGWATI said that, like some of the previous speakers, he was in favour of dropping the examples given in paragraph 16. The text suggested by Mr. Kretzmer seemed satisfactory in that it required each decision taken in a specific case to be relatable to the legitimate grounds for restriction listed in article 12, paragraph 3, and also to satisfy the tests of proportionality and necessity.

89. Ms. EVATT remarked that the general guidelines which the Committee wanted to apply were set out with sufficient clarity in paragraphs 12 and 13, as amended. She supported Mr. Klein's idea of giving examples from the Committee's own jurisprudence.

90. After a further exchange of views in which Mr. YALDEN, Mr. KLEIN (Rapporteur), Mr. KRETZMER, Ms. EVATT and Ms. CHANET took part, the CHAIRPERSON suggested that the discussion on paragraph 16 should be left in abeyance pending the circulation in writing of the text proposed by Mr. Kretzmer and accepted in principle by Mr. Klein.

91. It was so agreed.

Paragraph 17

92. Mr. KLEIN (Rapporteur) said that the paragraph dealt with other areas in which people were prevented from enjoying the right to liberty of movement. The examples given in the paragraph, which were certainly not exhaustive, were drawn from the Committee's own experience involving a large number of countries.

93. Mr. POCAR, pointing out that most of the examples seemed to be linked with the issue of proportionality, proposed the deletion of the fourth sentence of the paragraph, beginning with the words "Many of these impediments". He also proposed that the words "erected against" after the word "barriers" in the first sentence should be replaced by the words "unnecessarily affecting". Bureaucratic obstacles to liberty of movement - which were found in almost every country - were rarely, if ever, based on necessity.

94. Mr. SOLARI YRIGOYEN said that he had no objection to the paragraph, although a little condensation might be in order. The first sentence, in addition to referring to the rights of individuals to move freely and to leave the country, including their own, should also include a mention of the right to take up residence.

95. Mr. KLEIN (Rapporteur) said that he was prepared to accept all those suggestions.

96. Ms. EVATT suggested that the word "inaccessibility" near the beginning of the fifth sentence should be replaced by "lack of access".

97. Mr. ZAKHIA suggested that the word "unjustified" should be inserted before the word "obstacles" in the third sentence.

98. The CHAIRPERSON noted the emergence of a consensus in favour of the deletion of the fourth sentence.

The meeting rose at 6 p.m.

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SUMMARY RECORD OF THE 1758th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Mr. AMOR

later: Ms. MEDINA QUIROGA

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial report of Cambodia

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-42941 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4)

Initial report of Cambodia (CCPR/C/81/Add.12, HRI/CORE/1/Add.94, CCPR/C/65/Q/KHM/1)

1. At the invitation of the Chairperson, Mr. Om Yentieng, Mr. Ok Vannarith and Mr. Ith Rady (Cambodia) took places at the Committee table.

2. The CHAIRPERSON welcomed the Cambodian delegation, which consisted of Mr. Om Yentieng, Chairman of the Cambodian Human Rights committee, Mr. Ok Vannarith, a member of the Committee, and Mr. Ith Rady, Permanent Secretary of the Committee, who had drafted the initial report.

3. Mr. LALLAH said that, having taken part in a mission to Cambodia as a member of the Group of Experts for Cambodia appointed by the Secretary-General of the United Nations (A/53/850-S/1991/231) to assist the Cambodian authorities in resolving the problem posed by acts of genocide, he would be unable to participate in the consideration of Cambodia's periodic report.

4. Mr. OM Yentieng (Cambodia) said that the process of establishing the rule of law in his country had passed through three main stages. The first had begun on 7 January 1979 when the Pol Pot regime, which had imposed a reign of terror on the country for three years and 20 days, had been overthrown. The second had begun with the elections held in May 1993 under the auspices of the United Nations Transitional Authority in Cambodia (UNTAC), which had constituted a real turning point in the country's history. The beginning of the third stage had coincided with the elections held in 1998, which had been a real challenge, given that fighting had still been raging in Phnom Penh scarcely one year earlier. Another significant fact was that those elections had been the most important ever held in Cambodia, since every region in the country had taken part.

5. Replying to the questions contained in paragraphs 1 to 16 of the list of issues to be taken up (CCPR/C/65/Q/KHM/1), he said that, following Cambodia's liberation, a national tribunal had been created in 1979 for the purpose of trying those responsible for the genocide. Although the sentences handed down at the time had been deemed inadequate by the international community, the proceedings had made it possible to gather incriminating evidence and various testimonies which would prove to be extremely useful at the trial of the Khmer Rouge leaders.

6. In that connection, the case of Ta Mok, one of the Khmer Rouge leaders currently in detention, presented a problem. Under Cambodian legislation, the pre-trial detention period cou d not exceed six months and it was already over three months since Ta Mok had been arrested. As there would be no swift adoption of the bill to establish a special tribunal competent to try the perpetrators of acts of genocide and on which international judges could sit alongside Cambodian judges, it would be necessary to find a means of bringing Ta Mok to justice before the end of the pre-trial detention period. Cambodian jurists had proposed that he should be initially tried under the law which had

outlawed the Khmer Rouge, notwithstanding that he might reappear before judges to answer for his participation in acts of genocide once the aforementioned bill had been adopted.

7. The independence of the judiciary was guaranteed by the King with the assistance of the Supreme Council of Justice and judicial institutions were protected from all political interference by the mechanisms in place. Judges could be neither punished nor removed. Any State official or member of the armed forces who attempted to intimidate judges incurred administrative punishments and prosecution. The Supreme Court was currently focusing its efforts on strengthening the protection of judges against that type of influence, and the Human Rights Committee had been given wide scope in that respect. The inspection reports which it produced on the conduct of State officials were submitted directly to the Supreme Council of Justice, which took the necessary decisions in that respect.

8. Concerning the status of international instruments in domestic legislation, article 31 of the Cambodian Constitution stipulated that the Kingdom of Cambodia recognized and respected human rights as defined in the Charter of the United Nations and the Universal Declaration of Human Rights, as well as in all treaties and conventions concerning human rights and the rights of women and children. The Constitutional Council referred to that article in its analysis and interpretation of laws. Moreover, any bill submitted to the Parliament was accompanied by copies of the different human rights instruments with the aim of ensuring that any legislative enactments adopted were consistent with international standards.

9. The Constitutional Council consisted of nine members, of whom three were appointed by the King, three were designated by the National Assembly and three by the Supreme Council of Justice. In addition to its functions of ensuring compliance with the Constitution and human rights, the Constitutional Council was empowered to consider general election disputes.

10. The King, the Prime Minister and the President of the National Assembly could ask the Constitutional Council to decide on the constitutionality of a law prior to its promulgation. In the case of laws already in force, that power was exercised not only by those authorities, but also by the courts.

11. In connection with respect for the principle of equal rights, it should be stressed that, even though article 31 of the Constitution referred only to Cambodian citizens, all inhabitants of Cambodia, including aliens, were protected by the law. Anyone who believed himself to have suffered a violation of his rights could take his case to court.

12. Cambodia currently had four institutions responsible for defending human rights: the Senate Human Rights Committee, the National Assembly's Commission on Human Rights (paragraph 33 of the report), the National Human Rights Commission and the Human Rights Committee, a civil body in which 18 non-governmental organizations were represented. Plans were currently under way to establish a supreme national human rights institution. The authorities, aided by a Canadian expert, and non-governmental organizations were currently engaged in separate efforts to draft a bill to that effect.

The laws formulated would be submitted to the National Human Rights Commission, which would have the task of combining them into a single bill to be submitted to the National Assembly for consideration and adoption.

13. The Cambodian authorities were also giving serious thought to ratifying the First Optional Protocol to the Covenant; experts had been assigned to study the matter.

14. In Cambodia, there was neither de facto nor de jure discrimination against women. Of the 100,000 jobs created during the last three years, 80 per cent had been taken by women. Furthermore, four all-women parties had run in the 1998 elections and the Ministry of Women's and Veterans' Affairs was headed by two women, who held the ranks of minister and secretary of state respectively. The admittedly low percentage of women deputies was attributable to the composition of the political parties which sat in the Parliament. Similarly, the fact that there were fewer women in government bodies than under the former regime, before the Khmer Rouge came to power, was not the result of a deliberate policy to exclude women from key positions. On the contrary, in the selection of candidates for public office, women were given priority. In school there was no distinction between girls and boys. The fact that higher numbers of boys attended university was attributable to tradition and to certain social and economic factors. For instance, girls married much earlier than boys and faced difficulties if they tried to attend an establishment a long way from the parental home.

15. During the events of July 1997 and with the assistance of national institutions and human rights organizations, the Government had successfully avoided recourse to the extreme measure of declaring a state of emergency, even though empowered to do so under article 22 of the Constitution. That had proved to be a wise decision.

16. The term "extrajudicial execution" was inappropriate in the case of Cambodia, being a country where the death penalty was no longer in force. Nonetheless, any attempted murder constituted a criminal act, which had to be punished as such. In order to address the problem of violence, all illegally held arms had been confiscated and the restrictive measures recently adopted had even made it possible to reduce the number of persons legally entitled to possess arms.

17. Article 51 of the 1994 Law on Civil Servants gave rise to very different opinions. The current Prime Minister and the former Minister of Justice had declared themselves clearly in favour of its repeal, whereas other prominent figures were opposed to that measure. The working group of the political parties sitting in the National Assembly, for example, which had drafted the Government's programme of work before the latter had taken office, had been in favour of keeping the article. Once the Government had taken office, however, the Prime Minister proposed to the Council of Ministers that it should be repealed.

18. The National Assembly had already adopted the law prohibiting the manufacture, use, stockpiling and importation of anti-personnel mines, which had been promulgated by the King on 28 May 1999.

19. As for the prohibition on torture, he first wished to make clear that there were no secret prisons in Cambodia. The warden of the prison in Battambang (paragraph 138 of the report) had been tried and sentenced to a penalty of imprisonment and ordered to compensate the persons whose rights had been violated. The military police officer from Prey Veng province who had beaten a suspect had also been dismissed from office and had been given a prison sentence. In Kampong Cham province, a police inspector had been sentenced by the court for having kept a person in custody for more than 48 hours.

20. With regard to forced labour, traffic in human beings and child prostitution, attention should be drawn to the fact that Cambodia had a law prohibiting the abduction and exploitation of human beings, as well as traffic in human beings (paragraph 150 of the report). The police, non-governmental organizations and voluntary workers were devoting enormous efforts to the social rehabilitation of prostitutes and the National Children's Council was currently drafting a five-year plan to combat traffic in children as part of concerted measures by all countries in the region. The number of prison sentences imposed on those who engaged in the sexual exploitation of children, including foreign paedophiles, was constantly rising. Prostitution, particularly of children, was not only prohibited by law but also rejected by Cambodian traditions.

21. Given the availability of a cheap and abundant labour force, the country's enterprises had little need to resort to child labour. Most children in work were employed by their parents in commercial activities.

22. The enlistment of children in the army, which had been common practice under the Khmer Rouge and Democratic Kampuchea regimes, was no longer a problem in Cambodia. Only recently, the authorities had taken measures to end the practice whereby parents would place their children in the army in order to obtain their pay.

23. The CHAIRPERSON invited the Committee members who wished to do so to ask the Cambodian delegation questions concerning paragraphs 1 to 16 of the list of issues.

24. Mr. YALDEN said that he was impressed by the efforts made by the authorities to improve the human rights situation. In connection with the status of women, he welcomed the establishment of a ministry responsible for their advancement, but would like to know what tangible results it had achieved. The figures provided by the delegation and the representatives of the Secretary-General gave no precise idea of number of women holding senior posts at the national, provincial and municipal levels. Nor did the Committee have any information on the employment of women, particularly in managerial posts.

25. The question of the status of persons who were not ethnic Khmers also arose. According to the Cambodian delegation, they suffered no discrimination, yet article 31 of the Cambodian Constitution addressed the rights of Khmer citizens alone. Moreover, the wording of the 1996 Nationality Act gave the impression that there were ethnic Vietnamese minorities and indigenous peoples in Cambodia who did not enjoy the same rights as the rest

of the population. It would therefore be interesting to know the extent to which that Nationality Act and the Constitution were consistent with the Covenant.

26. In its reply, the Cambodian delegation had indicated that the authorities intended to establish a supreme commission on human rights. More precise details of the progress achieved in that respect would be welcome, particularly since it was extremely important that Cambodia should have organizations which were independent of the Government and capable of effectively ensuring the defence of persons whose rights had been violated.

27. Mr. WIERUSZEWSKI welcomed the State party's participation in a number of the human rights programmes run by the United Nations. Nevertheless, although it had declared its readiness to cooperate with the international community for the elaboration of rules by which to try crimes against humanity, the Cambodian Government had refused the assistance of a United Nations group of experts in establishing a tribunal responsible for trying such crimes. He questioned the State party's ability to institute such a tribunal without international assistance, as well as its willingness to take into account the views of the group of experts. He was also concerned by the judiciary's lack of independence. He wondered what measures were being taken, particularly by the recently created Supreme Council of Justice, to combat corruption and political pressure on judges. Article 51 of the 1994 Law on Civil Servants was particularly disturbing. Having pointed out that no inquiry had been carried out into the murder of a human rights activist killed in December 1998 on the grounds that the perpetrator had been covered by the provisions of that article, he wondered how often the article had been invoked since its entry into force.

28. Mr. KLEIN requested details concerning the efforts made to establish an efficient judicial system and in particular to provide training for judges, emphasizing the crucial importance of doing so in order to regain the trust of the population. He wished to know whether private individuals could directly invoke the Covenant before the courts and, if so, how they were informed of that right. Did non-governmental organizations play an information role in that respect, especially for the benefit of the illiterate members of the population? He was concerned by the State's lack of control over the security forces, which was illustrated by the recruitment of military personnel who had passed no examination (paragraph 373 of the initial report). Furthermore, various non-governmental organizations, including the Lawyers' Committee for Human Rights, had condemned the de facto secret prisons which existed in military bases. He asked whether military personnel exercised police functions and whether they had the same opportunities as the civilian police to lodge complaints and claim compensation.

29. Mr. BHAGWATI thanked the delegation for its replies, although he would have liked them to be more complete. He shared the concerns voiced in regard to the impunity of civil servants and military personnel and the State Party's refusal to establish an international tribunal that would try crimes against humanity. He added that even if such a tribunal were to be successfully established in Cambodia without external assistance, it would inevitably fall prey to political pressures and would not enjoy the confidence of the population. He would also like to have details concerning the Constitutional

Council, such as whether it had been created by a law, when it would commence operation, what its functions were, by whom its members were appointed and whether it could impede national laws which were inconsistent with the Covenant and, if so, in what manner. He understood that the circulars issued by the Ministry of Justice had binding force on the judicial system, that the Ministry of Justice had suspended three appeal court judges in 1998 and that a number of judges had reportedly been subjected to pressure in cases in which high-ranking officials had been implicated. He requested the delegation's comments on such cases of State interference with the judiciary.

30. Ms. CHANET said that she, too, was concerned by the current state of the Cambodian judicial system, which was partly explained by the former policy of annihilating the country's elites and live forces. Article 51 of the aforesaid 1994 Law on Civil Servants was particularly disturbing in that it was not a hangover from a former regime, but a new provision. It was the best illustration of the "culture of impunity" to which the Secretary-General of the United Nations had referred in his report. She inquired about the measures implemented by the Government to bring that culture to an end. Could the permanent National Human Rights Commission receive complaints and make recommendations to the Government, for example? The suspension of three judges by the Ministry of Justice in 1998 was particularly appalling, given that the Supreme Council of Justice was already functioning at that time. There was every reason to doubt the effectiveness of that Council, which in any case was not independent, since it consisted of the Minister of Justice and the Procurators-General. Cambodia still engaged in the practice of mass judgements and judges were traditionally connected with political parties. A full restructuring of the entire judicial system was therefore required. In regard to equality before the law, she expressed concern over the wording of article 31 of the Constitution, which guaranteed rights to "Cambodian citizens". Lastly, in connection with the right to life, she asked how the authorities were combating the scourge of antipersonnel mines afflicting the State Party.

31. Mr. KRETZMER was aware of the difficulties which faced the Cambodian authorities in reconstructing civil society following the mass killings and atrocities committed by the Khmer Rouge. It was a process which implied not only the adoption of appropriate standards, but even more so the establishment of appropriate institutions.

32. He associated himself with the questions put to the Cambodian delegation concerning the armed forces and requested fuller clarifications concerning the respective functions of the police and the army in connection with maintaining order. According to the information at his disposal, that task was often assigned to the armed forces, whereas the maintenance of order was, by definition, the job of the police.

33. Furthermore, was it true that members of the police and the armed forces used weapons to keep order? In particular, it would appear that, on certain occasions, members of the police had used hand grenades against civilians. If so, how could the authorities justify such a measure? He also inquired what other weapons could be used against civilians and what rules applied in that regard. In addition, he wished to know under what procedures an investigation could be conducted in cases where the security forces made use of their

weapons against the civilian population. He referred to two incidents in particular: the anti-government demonstration held in March 1997, during which the security forces had used their weapons, killing 16 persons, and the coup of July 1997 aimed at ousting Prince Norodom Ranariddh, in the course of which large numbers of civilians had been killed by the security forces. He wished to know whether investigations had been started to determine the accountability of State officials and what the outcome had been. Those two cases also further increased the impression of impunity.

34. In connection with the question of torture, he gathered from reading paragraph 137 of the report (CCPR/C/81/Add.12) that there were few cases of physical abuse during interrogation. Unfortunately, however, the information provided by Cambodian non-governmental organizations painted a very different picture. What measures had the Government taken to avoid instances of torture and ill-treatment during interrogation? In the list of issues (CCPR/C/65/Q/KHM/1), the Committee had asked several extremely precise questions concerning the application of article 7 of the Covenant, some of which he read out. The Cambodian delegation had not provided clear replies to all of those questions and he would be grateful if it would do so.

35. Mr. AMOR said that Cambodia had survived a terrible ordeal. A new start needed to be made, but reconstruction was a mammoth task that would take time. It was therefore understandable that the Cambodian authorities should have difficulty applying the Covenant in full. What was important was that the drive for better human rights protection should be set in motion in all spheres of Cambodian life.

36. As for the judiciary and the administration of justice, he endorsed the questions asked by other Committee members and Mr. Bhagwati in particular. There were undoubtedly obstacles in the way of improving the situation in that area, not least the fact that, at the time the report (CCPR/C/81/Add.12) had been drafted, only 139 judges had been on record for a population of 10 million inhabitants. Although it could be assumed that matters had since improved, it would be useful to know what measures had been implemented to increase the number of judges. Another worrying aspect was the politicization of judges and the party spirit which pervaded justice. In any event, the burden of the past was no justification for not introducing measures to ensure the full independence of the judiciary.

37. Concerning the question of equality between men and women, the Cambodian delegation had referred to a declaration of unconstitutionality in connection with the law establishing a ministry for women's and veterans' affairs. He wished to know what had been said in the debate on that subject. It would also be useful to have details concerning the priority given to women entering the civil service. Although it had been stated that 80 per cent of the jobs created in the civil service had gone to women, it was important to know at what levels those jobs were and in which sectors.

38. Both the constitutional provisions and the comments of the Cambodian delegation concerning the equality of men and women gave cause for optimism. Nonetheless, it would be helpful to know the facts of the situation. Could it be said that the status of women in Cambodia was satisfactory? With particular reference to the four all-women political parties, he wished to

know their true importance, their geographical distribution and their level of political representation. In any event, the policy of creating all-women parties as a means of improving the status of women was a controversial subject in many countries and he would like to know the position of the Cambodian authorities on the matter. He feared that the establishment of such parties disguised a situation that was in fact not very favourable to women, even assuming there was no bad intention. Everyone knew that built-in attitudes were important and that attempts to change them were often limited. Did Cambodia pursue an education policy aimed at combating those aspects of tradition that were discriminatory and demeaning to women?

39. Returning to the question of article 51 of the 1994 Law on Civil Servants, he wondered how a State that aspired to democracy could justify the existence of such a discriminatory provision, which gave such a poor image of Cambodia, besides encouraging practices that were hardly conducive to the promotion of human rights.

40. As for the status and treatment accorded to aliens, he was surprised to see that chapter III of the Constitution, which was devoted to the rights and duties of Cambodian citizens, contained no provision for aliens. They were purely and simply ignored in the Constitution. The Cambodian people, which had greatly suffered from discrimination in the past, should not be practising discrimination against aliens on its territory.

41. Concerning the question of links between the police and the army and the powers held by each of those institutions, he shared the concerns of Mr. Kretzmer. The army had not yet apparently acquired the status of neutrality which its position demanded and its members sometimes refused to submit to civilian authority for reasons clearly connected with its politicization. Had the Government taken sufficient measures to ensure that civilian authority was fully effective and that the police and army complied under all circumstances with national legislation and the relevant provisions of the international instruments to which Cambodia had acceded?

42. Mr. POCAR was aware of the substantial difficulties which the Cambodian authorities continued to face in the process of reconstructing civil society, despite all the efforts made.

43. He endorsed the questions asked by other members of the Committee and particularly shared the concern over the "culture of impunity" mentioned by Ms. Chanet. In that regard, he emphasized that it was imperative to delete article 51 of the 1994 Law on Civil Servants, wholly inconsistent as it was with the very essence of the Covenant. He drew attention to the provisions of article 2, paragraphs 3 (a) and (b), of the Covenant, according to which it was inadmissible for the perpetrator of a violation of rights recognized in the Covenant to disclaim responsibility on the ground that he had received an order from an authority that was not liable to prosecution. In particular, the possibilities of judicial remedy which the competent authority should develop in accordance with article 2, paragraph 3 (b), of the Covenant should never depend on the consent of a representative of the Government, the administration or any other authority. According to many official and unofficial sources, the application of article 51 of the 1994 Law had

precluded the prosecution of a number of civil servants. He would therefore like to have more precise information on the practical application of the that article.

44. In addition, it appeared that the persons responsible for enforcing the law were often former officials of the regime which was guilty of the crime of genocide. In that respect, he would have liked to see more details in the report regarding how the application of the Covenant was related to implementation of the Convention on the Prevention and Punishment of the Crime of Genocide. In his view, the Government should fully ensure that the principles contained in the Covenant could not be used, even unintentionally, to impede application of that Convention, particularly article 4 thereof.

45. Concerning the Constitutional Council, he understood that it had the power to state its opinion on the constitutionality of laws either before or after their promulgation, chiefly on the basis of article 31 of the Constitution. He wished to know the exact status of the Covenant and, in particular, whether it had only an interpretive value in the jurisprudence of the Constitutional Council or whether it could be invoked directly. Also, would a ruling of invalidity by the Constitutional Council have retroactive effect?

46. While he had taken note of the provisions of article 122 of the Constitution, he was still not sure whether the President of the Assembly was obliged to consider the request of a citizen who challenged the constitutionality of a law, or whether the matter was left to the discretion of political party representatives, which would in practice severely limit the remedies open to citizens.

47. Having noted that article 51 of the 1994 Law on Civil Servants was currently under discussion, he wondered whether the matter had been brought to the attention of the Constitutional Council. If so, the provision could easily be annulled, since it was blatantly inconsistent with the provisions of the Covenant and might therefore be similarly inconsistent with article 33 of the Cambodian Constitution.

48. Mr. SOLARI YRIGOYEN said he hoped for the earliest possible full application of article 31, paragraph 1, of the Cambodian Constitution, which would guarantee the promotion and protection of human rights. The end of the Khmer Rouge regime had marked the start of an extremely important stage in the history of Cambodia and substantial progress had already been achieved, despite occasional setbacks, such as the human rights violations perpetrated in 1997. Although the Cambodian authorities were making sustained efforts to bring to justice those responsible for the crimes committed under the Khmer Rouge regime, the feeling of impunity had still not been eradicated. He endorsed the requests for further clarifications on the subject made by other members of the Committee. He further cited the case of Prime Minister Hun Sen, who, in 1998, had received Khieu Samphan and Nuon Chea, two high officials of the Khmer Rouge regime who might have been implicated in serious human rights violations. Such an attitude on the part of the Cambodian authorities further accentuated the impression of impunity.

49. The Cambodian delegation had not touched upon the question of extrajudicial executions, although the Special Rapporteur on extrajudicial, summary or arbitrary executions of the Commission on Human Rights and the General Assembly of the United Nations had expressed strong concern on the subject, particularly with regard to the impunity enjoyed by the authors of such violations. He cited the case of Captain Sovanna and his wife and son, who had been forcibly taken from their home and shot to death a few metres away. Another example was that of Zhach Kim Sang, a supporter of Prince Norodom Ranariddh, who had been attacked in the capital and had reportedly been killed by police bullets. There were also reports that, in September 1998, plain clothes police officers had taken members of the opposition to a suburb of Phnom Penh, where they had been beaten. Although the authorities claimed that the persons concerned were thieves on the run, the victims were said to be opposition members. He would be grateful if the Cambodian delegation could provide further information on all of those cases.

50. Noting that the head of the Cambodian delegation had recognized the assistance provided by United Nations officials in Cambodia in the field of human rights, he pointed out that some of those officials had experienced hostility and that one had even been physically assaulted. Could the Cambodian delegation state whether it was true that the civilian and military police had used electric prods, high-pressure jets of dirty water and explosives to disperse non-violent demonstrators? Was it true that the demonstrations which had taken place between 7 and 15 September 1998 had resulted in deaths and injuries, and if so, how many?

51. The final question concerned the equality of the sexes: despite the excellent intentions expressed in Cambodian legislation, such equality did not apparently exist in practice. On the contrary, male domination in Cambodian society was striking. Could the delegation indicate the measures which had been taken or were being planned to enhance the participation of women in public life?

52. Mr. Amor took the Chair.

53. Ms. EVATT said that she was disappointed by the incomplete replies given by the Cambodian delegation to the written questions, which had been transmitted to it some considerable time before. Her own questions related to impunity, in which connection she wished to know how many individuals, other than Ta Mok, had been brought to justice and would be prosecuted for their responsibility in the atrocious crimes of the Khmer Rouge regime. The replies given by the delegation to the written questions on the independence of the judiciary were disappointing, particularly since the problem of impunity had been addressed in the report (para. 204), which also mentioned judges' fears (paras. 205 and 206), corruption of judges (para. 207) and inequalities in legal defence (para. 208). It was understandable that the deep-seated cause of the situation should relate to the difficulties entailed in establishing order in civil society after so many massacres and so many departures of elites fleeing the country. What were the authorities doing to improve judges' pay and to take disciplinary measures in cases where the rules of the judiciary were violated? Nothing had been said on that subject.

54. In connection with item 8 on the list concerning discrimination against women, she was surprised by the delegation's response, according to which there was no gender discrimination in Cambodia. In fact girls were under-represented in educational establishments and received a much poorer education than boys. Moreover, the consequences were borne out in the employment field: women were at the bottom of the salary scale and never represented more than 50 per cent of the workforce, even in the traditionally female-dominated sectors, such as teaching and nursing care. They were afforded no protection against discrimination or harassment and their participation in political life was negligible. In Cambodian society, the typical attitude seemed to be that women should be confined to traditional and stereotyped roles. No mention had been made of plans to remedy that situation, which was particularly disappointing since one could not but help but make a connection between the poor education which women received and the growing problem of traffic in women for prostitution. She would like a detailed reply from the delegation indicating a willingness to change.

55. Concerning impunity and extrajudicial executions, she said that Committee members were particularly interested in knowing how many members of the security forces had been brought to justice to answer for the scores of deaths and disappearances resulting from the coup of July 1997, the election demonstrations of July 1998 and the grenade attack of March 1997 (in which 16 had died). The reply would offer proof of the public authorities' intention to take action against the persons responsible for those acts. She also wished to know what was being done to train members of the police, improve discipline and reform the operation of the force. Lastly, no real reply had been provided to the questions contained in item 15 of the list of issues concerning forced labour, traffic in human beings and child prostitution. She would appreciate proper replies.

56. Ms. Medina Quiroga took the Chair again.

57. Mr. SCHEININ began by expressing his solidarity with the Cambodian people, who, after the great suffering they had endured, were again making efforts to build a new and democratic society that respected human rights. He was aware that much had been done, but a great deal still remained to be achieved and he hoped that new initiatives in that connection would emerge from the exercise under way between the Committee and the delegation.

58. The first key issue concerning Cambodia related to questions 11 to 15 of the list of issues, in particular impunity. He supported the views expressed by the other Committee members, who had clearly affirmed that article 51 of the 1994 Law on establishing official statutes for ministers and civil servants should be repealed and remained unconvinced by the account of political considerations, which, according to the delegation, had prevented such action being taken.

59. In his view, the second key issue concerned the independence of the judiciary. He endorsed the remarks already made on that point and would like concrete information on the steps taken to eradicate the corruption inherent in judicial practice in Cambodia and to eliminate interference by the Executive in legal proceedings, as occurred when political figures made statements concerning the culpability of accused persons before judgement had

been pronounced. Such practices were unjustified, even in a country where efforts were being made to establish a judicial system that respected all the guarantees set forth in article 14 of the Covenant, which was unquestionably difficult in a society where most judges had been murdered.

60. In regard to questions 14 to 16 on the list of issues concerning forced labour, traffic in human beings and child prostitution, he wished to know more about the law applicable to traffic in human beings, prostitution and the commercial exploitation of children and how it was enforced. According to the non-governmental organizations which provided information to the members of the Committee, 55,000 women and children were engaged in prostitution in Cambodia. Of those, 30 to 35 per cent were said to be aged 17 years or under. The delegation was invited to comment on that matter and provide details of the extent of traffic in human beings for purposes of prostitution, outgoing from Cambodia to Thailand and other Far Eastern countries, and incoming to Cambodia from Viet Nam and other countries in the region. Concerning those practices, he wished to know which acts and which authors of such acts were targeted by the relevant Cambodian legislation. Given the complexity of the crime network involved, he wondered whether current Cambodian legislation was a suitable tool with which to prosecute all those implicated in such activities.

61. With regard to the special protection due to children under the Covenant, he would like further information on the traffic in children for purposes of commercial exploitation in the light of what was said in paragraph 150 of the report, namely that the law on the procurement of persons for sale or prostitution stipulated heavier penalties for the perpetrators of that crime if the victim was a minor under 15 years of age. If an age limit were to be applied only in the case of victims of sexual exploitation for commercial purposes, it was disturbing that the protection did not extend to all persons aged under 18 years of age who were victims of that type of exploitation.

62. Information provided by a non-governmental organization cited the case of a prostitute who, in June 1998, had been beaten to death in a brothel by a person who had subsequently been arrested and ultimately acquitted for lack of evidence. In its comments, the non-governmental organization had established a connection between that episode and Cambodia's prevailing climate of impunity. He asked the delegation whether there was any penal legislation on traffic in human beings and the commercial exploitation of children, and whether it was effective, or whether the links between the businessmen, the military authorities and senior officials impeded the application of penal sanctions against persons implicated in that type of crime. Could the delegation provide figures on the number of actual prosecutions in cases of traffic in human beings and the sexual exploitation of children for commercial purposes?

63. With regard to forced labour and article 8 of the Covenant, paragraph 151 of the report mentioned Cambodia's ratification of the International Labour Organization (ILO) Convention concerning the Abolition of Forced Labour. He had doubts regarding a sub-decree of 1994 (see annexes), which established compulsory days of irrigation and agricultural work, which could be required of all citizens for up to 15 days per year. He would like

to know what justified such legislation, which did not appear to comply with the conditions set forth in article 8, paragraphs 3 (a) and (c) (subparagraph (iv)) of the Covenant.

64. The CHAIRPERSON invited the Cambodian delegation to reply to the oral questions which the members of the Committee had just asked.

65. Mr. OM Yentieng (Cambodia) first stated that he would do his utmost to collate the questions asked by the Committee members and to circulate their comments and observations in Cambodia, adding that a seminar might be organized to study the comments which the Committee members had conveyed to the delegation.

66. He said that he would endeavour to clarify some of the points raised in the questions. First, in connection with the crime of genocide and impunity, which had been the subject of a report by the Group of Experts for Cambodia (A/53/850-S/1999/231) on the feasibility of establishing a tribunal to bring Khmer Rouge leaders to justice, the delegation recalled that the Khmer Rouge regime, led initially by Pol Pot and then by Khieu Sampan, had lasted precisely from 17 April 1975 to 6 January 1979, and that since its overthrow in 1979 its leaders had never been punished. Cambodians were victims who had not yet obtained justice. Had anyone wondered what Cambodians had felt when they had seen those individuals, who had left the country, appearing as representatives of the whole Cambodian people at the United Nations, before the international community, where they had been welcomed with a diplomatic visa and every protection granted to important personalities?

67. Questions had been asked concerning the fact that Hun Sen had received Khieu Sampan and Nuon Chea at his place as if they had been friends. In fact, the intention behind that gesture had been to make it clear to the whole country that the Khmer Rouge regime had well and truly ended by 25 December 1998. Furthermore, the event had been filmed and broadcast across the country so that the whole population, in town and country alike, would be fully aware that those men had returned to civilian society. It was by no means a question of affording them protection to escape the law.

68. Concerning the report of the three United Nations experts (A/53/850-S/1999/231), he wanted to point out in the first place that it was already 20 years since the regime had toppled and that a tribunal was to have been established in accordance with the Charter of the United Nations, in other words by the Security Council. That had not yet been done. The fact was that Cambodia's internal affairs were concerned. Could the Security Council suddenly decide to establish an international tribunal to try Khmer Rouge leaders, considering that the Cambodians themselves had set up a special tribunal for that purpose? Cambodia had manifestly been in favour of a tribunal that would try the Khmer Rouge leaders, since it had actually established one, but that tribunal had not received international recognition.

69. In their report (A/53/850-S/1999/231), the three experts had analysed all the problems that needed considering and settling before the criminals could be tried. They had not demanded, but had recommended an international tribunal, while acknowledging that a national tribunal was a possibility, provided that international rules were applied. In that case, certain

conditions had to be respected, the first of which was that the law should be scrupulously applied. But the law stipulated that pre-trial detention should not exceed a maximum period of six months, after which a detainee had to be either tried or released. Some of the Khmer Rouge leaders were already in detention, and some had been for over three months, so that only about two months were left in which to prepare their case and take them to trial. Cambodia was awaiting the assistance of an expert, who was to draft a bill establishing a special tribunal. If the law was not ready in time, those held in detention could not be tried and would therefore have to be released. What then?

70. The second condition was the transparency of the trial. The Cambodians had planned to hold open hearings in a courtroom with seating for 600 persons so that the public could see and hear the proceedings. The third condition was that accused persons should be fully able to exercise the right of defence. To that end, they should be offered the services of a lawyer, as well as every procedural guarantee, in other words, the guarantee of the right of all accused persons to a defence. Under Cambodian law, any pieces of evidence in a case had to be communicated to the accused or his lawyer, who should be allowed sufficient time to study them. That procedure had been followed in the case of Ta Mok.

71. Concerning the establishment of a tribunal to try the persons presumed responsible for crimes of genocide or war, Cambodia had three options, apart from that of an international tribunal, which had been considered by the Group of Experts (A/53/850-S/1999/231). First of all, there was the possibility that the persons concerned should appear before an existing Cambodian court, which would conduct the trial on its own. Secondly, a domestic tribunal could conduct the trial with the cooperation of foreign experts, in the form of foreign judges and procurators who would assist the Cambodian judges and procurators. The third option, favoured by the Cambodian Government, but which required the approval of the National Assembly, was that of a domestic tribunal functioning with the active assistance of foreign judges and procurators, who would play a direct part in the proceedings. In Ambassador Hammarberg's view, that constituted a mixed solution. According to the Cambodians, it was a domestic tribunal with the active cooperation of foreign judges and procurators. However, establishing such a tribunal meant submitting a bill to the National Assembly. The Cambodian side had already prepared such a bill, which had been drafted by the Supreme Court and submitted to the National Assembly. The international community, however, had asked Cambodia to accept the assistance of an expert to prepare the bill. Cambodia had agreed and was still awaiting the expert.

72. The CHAIRPERSON said that the delegation would continue to reply to oral questions at the next meeting.

The meeting rose at 1.05 p.m.

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Held at the Palais des Nations, Geneva,
on Wednesday, 14 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.99-42947 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Cambodia (CCPR/C/81/Add.12; HRI/CORE/1/Add.94; CCPR/C/65/Q/KHM/1) (continued)

1. At the invitation of the Chairperson, Mr. Om, Mr. Ok and Mr. Ith (Cambodia) resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation of Cambodia to conclude its replies to questions raised by the Committee at the previous meeting.

3. Mr. OM (Cambodia) said that he would group his replies to the different questions raised under four main subject headings: impunity, discrimination, the judicial system and miscellaneous issues. On the subject of impunity, he reassured the Committee that the many comments on article 51 of the 1994 Law on Civil Servants would be conveyed as promptly as possible to his Government. Indeed, the latter would welcome such input in the light of its proposal for an amendment to the article to be considered at the forthcoming session of the National Assembly. Article 51 of the Law in question could not be amended or revoked by the Constitutional Council since it was not deemed to conflict with the provisions of the Constitution.

4. The article had been adopted at a time when judges and prosecutors had been in short supply and was designed to prevent unlawful convictions. According to available statistics, to date around half of the 222 complaints lodged in connection with the article had been followed up and the offenders brought to justice; the remaining cases were still pending, presumably because the head of the relevant Ministry or department had failed to give his consent for the proceedings to get under way. It was in an effort to remedy the situation that the Government had decided to propose the amendment of the article, so as to enable judges and prosecutors to bring charges immediately against civil servants suspected of an offence without having to seek their superior's authorization. Under Cambodian law, the accused must be informed of the charges against them within 48 hours. He confirmed that the article did not apply to military personnel, who were tried in military courts.

5. In response to queries regarding a specific human rights violation committed in December 1998, he said he would forward a report on the case to the Committee in due course.

6. He did not consider that there was ample justification for associating the term "culture of impunity" with the Cambodian people; it was not inherent in their character. Admittedly, human rights had suffered greatly under the Khmer Rouge regime and those responsible for some of the violations committed at that time had not yet been brought to justice. The Committee always emphasized the need to establish the rule of law and Cambodia was striving to make progress in that direction. A judge needed sufficient evidence and testimony to make a conviction, and police and prosecution investigations must be duly completed before a trial could be held. On that score there was

considerable discontent among Cambodians, for even when a person was known to be guilty of an offence, he could be released by a judge who found that the investigation procedures had not been properly complied with.

7. The Government had taken steps to ensure the prompt establishment of a committee to investigate the grenade attack of 30 March 1997. The results of the thorough investigation, which had been carried out under his direct supervision, were to be published shortly. The preliminary findings had been subject to verification by independent criminal investigation experts using appropriate technology. The reference to a foreign investigation bureau in the written replies should not be confused with the Federal Bureau of Investigation (FBI). For obvious reasons the identity of the experts in question would need to be kept secret. The verification phase had only recently been completed, which explained the delay in publishing the outcome of the investigation.

8. The forthcoming report would provide two possible scenarios for the incident. According to the first scenario, which was also the version of events reported in the foreign press, apparently on the basis of an FBI report, two people had been allowed by government forces to launch grenades at a demonstration by the opposition party, the Khmer Nation Party. It was held that members of the Prime Minister Hun Sen's bodyguard unit were to blame. According to the second scenario, which was based on the recent investigation and had been verified by international experts, the two people concerned had not even been present at the scene of the incident, but had been paid to make such claims by the opposition party. Under Cambodian law, persons found guilty of wrongfully accusing another of an offence were liable to only seven days' imprisonment.

9. Replying to comments on the so-called coup of 5 July 1997 in which forces loyal to Hun Sen had attacked those loyal to Prince Ranariddh, he stressed the desire of the National Human Rights Commission not to get involved in the politics of the matter and to abide by its regulations and aims. He had personally provided assistance to the United Nations Special Representative on the situation of human rights in Cambodia in connection with human rights violations committed during and after the coup. In the light of the Special Representative's memorandum to the Government of September 1997 considerable progress had been made on the investigation front. As borne out by a report published recently by the Ministry of the Interior, some of the violations mentioned in the memorandum had already been followed up and those responsible would be brought to justice. The whole investigation progress had been greatly facilitated of late by the return to Cambodia and cooperative attitude of leading representatives of both parties involved in the coup.

10. With regard to torture, he said that when a defendant claimed that he had been subjected to torture during a police interrogation he would normally be released by the judge, who would order the police to carry out further inquiries, for evidence or testimony extracted through torture was not admissible in court. Although the problem of police torture was not generally recognized in Cambodia, he did not deny its existence and assured the Committee that every effort was being made to improve the current situation. Torture was a violation of human rights and as such was punishable by law.

11. On the subject of discrimination, specific questions had been raised about the weight of Cambodian tradition in discrimination against women. Some aspects of Cambodian tradition encouraged respect for human rights, while other aspects needed to be brought in line with the requirements of modern society. It was worth noting, nonetheless, that unlike in many other nations, Cambodians had a definite preference for daughters; a family without girls was not considered as a happy family. That ensured that women enjoyed a special place in Cambodian society. Of course, there were instances of violence by men against women and vice versa; they were dealt with by the criminal justice system.

12. As for women in politics, there were four all-women political parties and if one of them were to win a majority in the next election, then, there might one day be a woman prime minister. The poor representation of women in Cambodian politics could be blamed to a great extent on the political parties themselves. Prior to the 1998 elections, the Minister for Women's Affairs had always been a man; that was no longer the case. The situation was gradually changing thanks, inter alia, to the efforts of the National Human Rights Commission to encourage all political parties to put forward more women candidates. One further noteworthy development was the pledge by the Vice-President of the Cambodian People's Party that more than 30 per cent of the candidates for the forthcoming municipal elections would be women. Since 1998, the municipal councils had been delegated considerable powers in running their own affairs. So there was hope that in future women would have far greater say in the development and organization of their communities.

13. Providing further clarifications on the statistics given earlier on the employment of and greater job opportunities for women, he pointed out that in the past three years more than 100 new textile factories had opened in Cambodia. On average, more than 80 per cent of factory workers were women with little or no education. In his view, it was preferable for poorly educated young women from rural areas to find gainful employment in large towns and to be able to support their families rather than being drawn into prostitution. It was not true that women's wages were lower than men's: there was equal pay for the same work. A report prepared recently in connection with Cambodia's obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women could be made available to the Committee for more detailed information and statistics on the overall situation of women in the country.

14. Although article 31 of the Constitution applied exclusively to Khmer citizens, it was worth noting that no article of the Constitution expressly stated that non-Khmers should not enjoy equality before the law. In practice, any person who claimed to be the victim of a violation was entitled to take his case to court. However, non-Khmers were subject to other restrictions: they were not entitled to purchase land or property in Cambodia. Perhaps as far as the Committee was concerned that was tantamount to discrimination. In any case, he would convey to the Constitutional Council the Committee's view on the necessity of an article in the Constitution to guarantee equality before the law for everyone in Cambodia.

15. His Government was taking steps to strengthen the judicial system, first and foremost by striving to resolve the problem of the dearth of judges to

which the Committee had drawn attention. Efforts were being made to train more judges, but it would take some time before the results became apparent, not least because of the long years of study required to enter the profession. Likewise there was a shortage of qualified lawyers, which posed a particular problem since under Cambodian law a defendant must have legal representation in order to appear before a judge. One of the top priorities of the new Government was to strengthen human rights and establish the rule of law by a number of means, including fast-track training programmes for judges and lawyers.

16. As a further reform measure, it was intended to separate the roles of the police and the gendarmerie. Investigation procedures were to be improved by giving greater powers to the government procurator and also by enhancing the role of legal counsel. In order to remedy the shortage of judges in the country, it was intended to make them a privileged group commanding higher salaries than other Cambodians, amounting to some $400 per month. That would help to ensure that society afforded them the respect they deserved.

17. On the question of reform of the judicial system, the role of judges in court proceedings was being changed, and a new Criminal Code and Civil Code were currently being drafted, with the assistance of Japanese experts. The Supreme Council of Justice was not yet fully operational, but the Constitutional Council was functioning. It had played a useful role in monitoring the 1998 election process, and also in reviewing new legislation. Recently, for instance, the Council had ruled that article 5 of a new bill on the functions of the Office of the Secretary of State for Women's Affairs was unconstitutional since it laid down that the Secretary of State should be a woman, which amounted to discrimination. As a result, the bill had been thrown out and would have to be resubmitted to the Assembly for consideration.

18. On the question how the Covenant was implemented in practice, he said that new legislation was always drafted on the basis of the relevant international instrument to which Cambodia was a party. Such instruments were also invoked in court: for instance, the Convention on the Rights of the Child had been invoked by a judge in a case involving sexual abuse of a minor.

19. In reply to the question whether the security forces constituted a "state within a state", he pointed out that Cambodia had been in a state of war for 20 years and had only been fully at peace since 25 December 1998. Great efforts were now needed to ensure that human rights were protected, particularly since there were still numerous armed soldiers of the Khmer Rouge in hiding. However, the country had made some progress along the path to development and respect for the law, and it was no longer possible for the security forces to act with total impunity. It was true that there had been cases of abuse of power by certain individuals, and also cases in which the gendarmerie had operated illegally as judicial police. However, that situation was being remedied by a new bill on criminal procedure, which laid down that such powers could now be exercised only by the police. As to the case of the Commander of the Armed Forces who had punished a soldier by placing him in a container exposed to the sun, there had fortunately been no recurrence of such cases since 1997, and the National Human Rights Commission was monitoring the situation closely.

20. On the subject of prostitution, there were currently some 35,000 prostitutes in the country, earning more than US$ 22 million a year, whereas unfortunately the Government had only US$ 3 million at its disposal for AIDS control. Prostitutes sent more than 50 per cent of their earnings home to support their families in rural areas. Brothels were at present prohibited by law, but the Ministry of Health, as well as a number of NGOs, were of the view that they should be officially recognized, so as to facilitate health education and prevent the spread of AIDS. The issue was still being debated in Cambodia.

21. Although there was as yet no law governing the status of NGOs, there were more than 300 operating in the country which were recognized by the State. A bill on the subject was currently under preparation, in which the views of NGOs would be taken into account.

22. Certain government officials, soldiers and police were entitled to carry arms, but subject to certain restrictions. So far, more than 60,000 weapons had been handed in to the authorities.

23. There were a number of different institutions in Cambodia working in the human rights field: as well as the human rights commissions in the Senate, the National Assembly and the Government, at least 18 of the 300 NGOs in the country were concerned with human rights. Those bodies had free access to prisons to monitor conditions. In addition, it was intended to set up a supreme authority, the National Human Rights Committee, which would be completely independent of the Government. A bill establishing the new Committee was currently in course of preparation.

24. Mr. KRETZMER said he would appreciate an answer to his question as to what rules governed, first, the arms which law enforcement officials were entitled to carry, and secondly, the right to open fire in cases where public order was involved.

25. Mr. ZAKHIA noted that chapter III of the Constitution was entitled "Rights and duties of the Khmer citizen". Did not that imply a distinction between Khmer and non-Khmer citizens? He had been concerned to learn that, according to a study carried out by the Office of the Secretary of State for Women's Affairs in 1996, one Cambodian woman in six had been subjected to violence within the family. The study stated that no effective measures had previously been taken to protect women against such violence, and he would be glad of information on that point.

26. Mr. OM (Cambodia), in reply to the first question, said that under a new decree, all weapons, whether legal or illegal, had to be handed in to the authorities. Certain police officers still had the right to bear arms, but efforts were being made to restrict their use as much as possible: for example, officers were not permitted to take their weapons home with them.

27. On the point raised by Mr. Zakhia, there was nothing in the Constitution to indicate a distinction between Khmer and non-Khmer citizens. However, he would refer the question to the Constitutional Council on his return. Lastly,

he was not sure whether the figures quoted for cases of violence against women in the family were correct: he would provide the Committee with more information at a later stage.

28. Mr. BHAGWATI noted that the representative of Cambodia had referred to the role of the Constitutional Council. Given that paragraph 21 of the report stated that the Council was not yet functioning, he asked how long it had been in operation.

29. Mr. SOLARI YRIGOYEN said he would be glad to have a reply to his question on extrajudicial killings. He had referred to specific cases in which a number of persons had been murdered by uniformed police officers. In particular, he had asked for information on a case in which civil and military police had used such instruments as electric prods and high pressure jets of dirty water on demonstrators, and had asked whether any deaths had resulted.

30. Mr. OM (Cambodia), replying, said that at the time the report had been drafted, the Constitutional Council had not yet been functioning; it had in fact begun work in July 1998.

31. Unfortunately, a report by the United Nations Centre for Human Rights in Cambodia had indeed mentioned as many as 40 extrajudicial killings. He would provide the Committee with more information once the investigations had been concluded. Regarding the demonstration in 1998, 15 demonstrators had been arrested by the security police. An immediate investigation had been launched in cooperation with the United Nations Office in Phnom Penh, following which it had been concluded that no deaths had resulted.

32. The CHAIRPERSON invited the delegation to respond to questions 17 to 33 of the list of issues (CCPR/C/65/Q/KHM/1).

33. Mr.OM (Cambodia), in reply to question 17, said the maximum duration on pre-trial detention was six months. While great efforts were made to observe time limits, there were serious technical problems hampering the investigation process. For instance, in cases of drug trafficking, drug samples were sent abroad for analysis, and the results were often not received within six months. Detention of persons not subsequently found guilty entitled the victims to claim compensation.

34. On question 18, he said that minors under 13 years of age could not be detained, and minors aged 13 or 14 could be detained for no longer than a month, except in cases involving a criminal offence, where that period could be doubled.

35. In reply to question 19, he said that procurators were required to visit prisoners every month and to pass on any requests they might have. Shackles were used only to restrain prisoners, not as a punishment. Handcuffs could be used to prevent escape and to prevent injury or damage to property; they should not cause pain and should not be worn for longer than necessary. It was difficult to solve the problem of prison overcrowding while the Government was suffering from financial constraints. The introduction of women warders would be a good way of preventing rape, but women were often reluctant to

serve in prisons. The Minister of the Interior had recommended that the Chief of the Prison Service should take all necessary measures to safeguard the life and health of women prisoners.

36. In reply to question 21 (art. 14), he said that the Supreme Council of Justice had nine members: the King, who presided, the Minister of Justice, the President of the Supreme Court, the Procurator-General of the Supreme Court, the President of the Court of Appeal, the Procurator-General of the Court of Appeal, and three magistrates elected by their peers. Three alternate members were also elected by their peers to replace absent members. The Council had a term of office of five years and was consulted in connection with draft legislation concerning the organization of the Judiciary and related areas; it also took decisions on the appointment, transfer, secondment, suspension and removal of judges and procurators.

37. For answers to question 22, members of the Committee were referred to the answers already given in connection with article 2. As to question 23, despite the shortage of resources of all kinds, considerable attention was being given to guaranteeing equality before the law in general and the right of accused persons to defence, in particular. Before beginning his work, the investigating magistrate must arrange for the accused to have a defence counsel, in whose presence all interrogations must be conducted. Every item of evidence must be handed to the accused or to his lawyer in plenty of time for the preparation of the defence.

38. Replying to question 24 (art. 19), he said that the press in Cambodia enjoyed immense freedom. Freedom of the press in Cambodia was a source of pride because it was in conformity with article 19 of the Covenant and the application of the Press Law was in conformity with article 19, paragraph 3. There was no law to prevent the press from appealing to the courts. The Government ensured the equality of all political parties during electoral campaigns by assigning equal broadcasting time to each party. Private radio and television stations were not authorized to broadcast propaganda in favour of any political party during the campaign.

39. With regard to question 25 (art. 21), he said that if a demonstration was found to be a threat to public order or public safety, the authorities informed the organizers that the demonstration could not take place or requested them to change its date or venue. Organizers of demonstrations were fully entitled to initiate court proceedings if they considered that the decision was not in conformity with the law. In the majority of cases, those who organized demonstrations without applying for permission or proceeded with a demonstration that had not been authorized were more interested in fomenting violence than in resolving the problem in a legal and democratic manner. The investigation of the incident involving a grenade attack on a crowd of demonstrators had not been forgotten and was still under way.

40. In connection with question 26 (art. 22), he said that the draft Law on Associations had been completed and sent to NGOs and various associations for their views. The Law on Political Parties, which had been adopted by the National Assembly, enabled political parties to undertake activities and to participate in elections. Under its article 6, political parties were

prohibited from engaging in activities involving secession, subversion of the free and pluralistic democratic regime, the use of violence in order to seize power, and the establishment of armed units.

41. Replying to questions 27 and 28 (art. 23), he said that measures to combat domestic violence and sexual abuse of women and children included education, broadcasts, the active participation of NGOs, judicial proceedings and the provision of funds to victims. The Government was currently investing in ambitious projects designed to develop the role of women in society, especially regarding their access to employment. The restriction placed on marriage by persons of the same sex, the impotent, those suffering from leprosy or tuberculosis, and the insane was not incompatible with human rights and freedoms; rather, it was designed to protect the family and to prevent the transmission of infectious diseases. There was nothing to stop a tuberculosis sufferer from marrying once he or she was completely cured. Although the law made no specific provision for HIV/AIDS, each family was expected to take general precautions. According to Cambodian tradition, the husband, who was responsible for supporting the family, was normally older than the wife. The Law on Marriage provided that adult persons were free to marry; however, where the husband was aged below 20 and the wife below 18, the marriage was considered invalid until the couple reached marriageable age. So far as question 29 on article 24 was concerned, members were requested to refer to the answers given to questions 14 and 18.

42. With regard to question 30 (art. 25), he said that the role of the Government was confined to providing funds at the request of the National Election Commission. The Commission's impartiality could readily be ascertained by comparing its decisions and activities with its terms of reference as established by law. A political party which was not satisfied with the Commission's decisions could bring a case before the Constitutional Council; that was the extent of the Council's relationship with the National Election Commission.

43. As to questions 31 and 32 (arts. 26 and 27), he said that the Cambodian population was generally free of racial prejudice. So far as the Vietnamese in Cambodia were concerned, a question arose with regard to responsibilities for the savage acts of the Khmer Rouge prior to their collapse. It would be best if certain political parties refrained from introducing issues of racial discrimination into their policies. The Government, for its part, was determined to prevent any form of economic investment that would entail the disappearance of Cambodia's ethnic minorities and their valuable traditions. Lastly, replying to question 33 relating to article 2, he said that the initial report on the implementation of civil and political rights in Cambodia had not yet been disseminated owing to lack of funds and also because relatively little time had elapsed since the report's completion.

44. The CHAIRPERSON invited members of the Committee to ask additional questions relating to the second part of the list of issues.

45. Mr. KRETZMER remarked that, as with the first part of the list of issues, the delegation had again failed to provide clear answers to a number of very specific questions. In particular, he would appreciate clear answers to the questions asked in paragraph 19 relating to the treatment of persons

under detention. With regard to the problem of domestic violence, the delegation had provided only a very general answer, whereas the report freely admitted that acts of domestic violence against women were common (para. 325) and that 95 per cent of such acts were committed by the husband (para. 339). According to the same paragraph of the report, the Office of the Secretary of State was currently examining the causes of domestic violence with a view to taking appropriate steps to halt it. What were the results of that investigation? According to NGO reports, the authorities in Cambodia did not concern themselves with cases of domestic violence unless they entailed murder or very serious injury. Was that really the situation? Was it true that the law did not regard forced sexual relations within marriage as rape?

46. Ms. EVATT reiterated her concern at the large gap between the frankness of the report and the inadequacy of the delegation's response to the Committee's questions. In addition to the points already raised by Mr. Kretzmer, she drew attention to the question concerning access to a lawyer after arrest (para. 17). The report conceded that some remand prisoners were detained for longer than six months without trial, and NGO reports indicated that such prisoners accounted for 34 per cent of all pre-trial detainees. What were the rules governing access to family and a lawyer, and how were they enforced? The delegation's response to the questions in paragraph 18 suggested that juveniles could be detained without judicial supervision for up to one month. If that was so, it represented a violation of article 9; a confirmation would be appreciated. Further to Mr. Kretzmer's question in connection with paragraph 19, she asked whether the use of shackles and chains in prisons had been abolished. In connection with question 20, she wished to know what was being done to overcome the problem of rape of women prisoners.

47. The delegation's response to the questions concerning freedom of expression, assembly and association had also been remarkably vague. What precisely was being done, in particular, to amend the present unsatisfactory situation with regard to freedom of the press? Lastly, what steps were being taken to prevent domestic violence and forced marriages of under-age women?

48. Mr. KLEIN, noting that the Cambodian representative had described freedom of the press in Cambodia as "immense", associated himself with the concern expressed on that score by Ms. Evatt. Paragraph 297 of the report referred to a large number of newspapers closed or suspended by the competent Ministry; such a situation was quite abnormal in a free democracy, where even one newspaper closure would be a cause for concern. Why was the publication of a newspaper subject to approval by the Ministry of Information? A law to that effect, which left the Government free to approve only those newspapers which followed its own line, was surely conducive to an atmosphere of distrust. Was it true that the Ministry's approval was to be made subject to annual review? What remedies were available against withholding of approval or against closure or suspension of a newspaper? Were television and radio in Cambodia completely controlled by the Government and, if so, how could opposition parties express their views?

49. Mr. AMOR said that the questions he wished to ask related to specific paragraphs of the report. First, it was stated in paragraph 173 that the daily food allowance for detainees had been set at a rate of 1,000 riels, a sum corresponding to the salary of middle-ranking State officials. He found

that information perplexing and would appreciate a detailed explanation. With reference to paragraphs 295 and 297, he associated himself with the questions already asked by Mr. Klein and, in particular, asked for information on access to the broadcasting media by religions other than Buddhism. In connection with paragraphs 360 and 361, he was concerned at the failure to provide for the keeping of registers of births, marriages and deaths, and asked whether the situation in that regard had changed since the completion of the report in November 1997. The keeping of population records was of fundamental importance to human rights and, in particular, the right to vote. Lastly, referring to paragraph 370 of the report, which mentioned the case of a deputy being dismissed from the National Assembly after being expelled from his political party, he pointed out that any law authorizing such dismissal would be incompatible with article 25 of the Covenant and asked for additional explanations.

50. Ms. GAITAN DE POMBO asked for additional information about the activities of the United Nations Centre for Human Rights in Phnom Penh and the assistance rendered by the Centre to the Royal Government. Secondly, noting that almost 44 per cent of the population of Cambodia were under 15 years of age, she asked for further information about measures being taken to improve the situation with regard to child labour, child prostitution and the detention of juveniles.

51. Mr. BHAGWATI said he had not heard an answer to his earlier question whether the Ministry of Justice was empowered to suspend judges of the Court of Appeal and, if so, what constitutional basis existed for the exercise of such power. He had also asked whether the Minister of Justice issued circulars to the courts which had force of law.

52. According to paragraph 211 of the report, some judges were obliged to seek the opinion of the Ministry of Justice on the interpretation of articles and the determination of offences. The Ministry's role in that regard was difficult to reconcile with the principle of independence of the Judiciary. What steps were being taken to remedy the situation?

53. Were the Minister of Justice and the Procurators-General of the Court of Appeal and the Supreme Court, i.e. representatives of the Executive, members of the Supreme Council of Justice and, if so, what role did they play? Who were the other members and what was their status? Was the Council empowered to appoint judges and to take disciplinary action?

54. He inquired about training facilities for lawyers and judges, especially in the area of human rights. Had any provision been made for continuing education? He wished to know whether there was any legislative machinery for determining refugee status.

55. Mr. ZAKHIA said that, according to Cambodian and international sources, violence against women in Cambodia had attained epidemic proportions. He submitted that there was a relationship between real violence and symbolic violence, by which he meant the concentration of power in the hands of men who promoted violence between men and women. If a quota system was introduced whereby women were given greater access to positions of power, e.g. in the Executive, the Legislature and the police, the phenomenon of male violence

might recede. He asked for more information about marriage laws. Was civil marriage compulsory? And did men and women enjoy equal rights in respect of marriage, divorce, child custody and inheritance?

56. Mr. YALDEN said that the delegation's response to paragraph 32 of the list of issues had been unsatisfactory. In particular, it had failed to provide any information about indigenous hill tribes. He hoped that that omission would be remedied, in writing if necessary.

57. Mr. SCHEININ said he had been encouraged by the information in paragraph 386 of the report concerning the land and resource rights of indigenous hill tribes. But, according to NGO sources, the positive trend had not continued and the Special Representative of the United Nations Secretary-General and the World Bank had noted an upsurge in illegal logging and the granting of logging concessions on the lands of indigenous hill tribes. What was being done to end illegal logging, which was allegedly being conducted by the armed forces? And were the indigenous tribes fully involved in the consultation process when logging concessions were granted? Was sustainability of their traditional way of life a criterion for granting concessions?

58. Mr. SOLARI YRIGOYEN said he was concerned about reports of the harshness of the prison regime, especially in the provinces, where food shortages had allegedly led to serious health problems among inmates. He asked whether the Government planned to impose an effective ban on shackles and chains, which were still used in some prisons to control "undisciplined and dangerous prisoners". According to the Government, it was impossible for economic reasons to segregate accused from convicted persons, but other measures with no financial implications could be introduced to improve prison conditions. For example, prisoners were currently allowed to send only one letter a month and family visits were restricted to one every two months.

59. He was concerned about the Cambodian tradition of arranged marriages. If, as the Government claimed, forced marriages were not a real but only an "apparent" phenomenon, was it prepared to prohibit the practice?

60. Mr. CM (Cambodia) said that many of the questions asked by the Committee members would have to be answered later in writing. Before leaving Cambodia, he had conducted an in-depth inquiry into prison conditions. There were 24 prisons with a total of 3,530 prisoners, none of whom had been deprived of their human rights. If inmates were raped or subjected to ill-treatment, the perpetrators would be punished. With regard to complaint procedures, when inmates wished to consult legal counsel, the competent prison officers were required to transmit the message. Family members visited prisoners every week and could also pass on complaints. Representatives of an NGO called Licadho worked at the Central Prison five days a week and received all kinds of complaints. The International Committee of the Red Cross (ICRC) also paid monthly visits to all prisons.

61. With regard to the rape of women detainees, female warders offered protection in some establishments but women were generally reluctant to work in prisons. The Ministry of the Interior had issued a circular requiring the prison authorities to take immediate action in emergencies involving women

detainees. Existing prisons were very old buildings dating from colonial times and their capacity was limited. Most of them housed double the number of prisoners for which they had been designed. But overcrowding afforded a measure of protection against rape.

62. Forty per cent of the prison population were accused persons awaiting trial. Many of those in custody for over six months were drug traffickers. Samples of the products found in their possession had been sent to the United States for analysis and it usually took at least six months to obtain the results. The United States had been asked for assistance in establishing a drug analysis laboratory in Cambodia and action on that request was expected the following month.

63. Juvenile detainees, most of whom were petty offenders, were treated in the same way as adults. The police were working with NGOs and the Centre for Juveniles to improve conditions for minors, for instance by providing them with educational facilities. Detainees aged 13 or 14 could be remanded in custody for a maximum of 30 days, during which period the examining magistrate and lawyers were required to complete their investigation and bring the accused before the court. In the case of serious offences, the period of custody could be increased to two months.

64. There were many newspapers in Cambodia. The Press Code did not require them to apply for a permit but simply to inform the Ministry of Information. If they received no response within two weeks, they could proceed with publication. Journalists were issued with press cards by that Ministry. Each newspaper was required to renew its application for press cards each year so that the Ministry could keep track of departures and new recruits and compile statistics of journalists. There were two journalists' associations, both of which had major budgetary problems since losing the subsidy they had previously received from the Asia Foundation.

65. Cases of forced marriage were very rare. Both girls and boys were always fully consulted by their parents prior to marriage. Cambodian legislation did not establish a minimum age for marriage but age was mentioned in connection with the civil status of newly married persons. For example, although the traditional marriageable age for most women in rural areas was 15 to 17 years, the women concerned could not register their marriage until they reached the age of 18.

66. With regard to freedom of the press, very few newspapers had been closed down by the courts. Most newspapers that ceased publication did so for financial reasons. The State operated one radio station and one television channel. The remainder were privately run. There were six private television channels, which were prohibited from broadcasting party political propaganda during election campaigns. The State television channel afforded equal broadcasting time to each party.

67. The food allowance of 1,000 riels per detainee per day mentioned in paragraph 173 of the report was equivalent to roughly one third of a United States dollar. The allowance of 30,000 riels per month was higher than the salary of a policeman with an entire family to feed. A construction worker earned only 700 riels a day. It was estimated that the living

conditions of detainees, compared with those of other sectors of society, stood at about 30 in a scale running from 1 to 100. They also received donations from their families, ICRC and NGOs. Within a month or two, the Ministry of Health planned to send groups of medical professionals into the prisons to check the state of health of individual inmates. Few prisoners complained of illness and all inmates had shoes, whereas millions of Cambodian villagers were forced to go barefoot. Many Cambodians in rural areas had no drinking water but all prisoners had an adequate water supply.

68. Newborn children had not all been registered but for decades Cambodia had been contending with war, population displacement and massive influxes of refugees. No birth certificates had been issued, for example, in the areas occupied by the Khmer Rouge. But even if children were not registered immediately after birth, they would be registered with the local authorities as soon as they reached the age of six and began attending school.

69. The role of the future National Human Rights Commission had not yet been finalized. A Canadian expert was drafting a bill that would be discussed with NGOs and the Human Rights Committee of the National Assembly. The Commission would be completely independent and conduct its investigations in the light of relevant United Nations standards and recommendations.

70. The CHAIRPERSON invited the delegation to continue responding to the Committee's questions at the next meeting.

The meeting rose at 6 p.m.

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Sixty-sixth session

SUMMARY RECORD OF THE 1760th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.99-42981 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Cambodia (CCPR/C/81/Add.12; CCPR/C/65/Q/KHM/1) (continued)

1. At the invitation of the Chairperson, the members of the Cambodian delegation resumed their places at the Committee table.

2. The CHAIRPERSON invited the Cambodian delegation to reply to the oral questions asked by the Committee members after hearing the delegation's replies to the questions posed in paragraphs 24-33 of the list of issues (CCPR/C/65/Q/KHM/1).

3. Mr. OM Yentieng (Cambodia), replying to the questions on the situation of women in regard to marriage, stated that, in accordance with the law on marriage and the family, forced and early marriages were both prohibited. The fixed legal age for marriage was 20 years for men and 18 years for women. Marriages entered into at any earlier age were null and void, although they might become valid once the young persons in question attained the required age. In practice, although girls could not be obliged to marry a particular man, most still sought their parents' advice on the matter.

4. Replying to the questions concerning the case of the three judges who had been suspended by the Minister of Justice, he stated that the suspension was only a temporary measure taken in circumstances where a person convicted of opium trafficking had been sentenced to three years' imprisonment by a final judgement. The same person had then been tried in another case concerning trafficking in three tons of hashish intended for export. Having been convicted in the second case, the accused had then lodged an appeal. The three judges responsible for ruling on the appeal had ordered his release, having omitted to remember that he had been sentenced to three years' imprisonment in the first case and could not therefore be released. Moreover, on his release, the man in question had left the country, aided and abetted to that end by an international organization operating in Cambodia. It was under those circumstances that the Minister of Justice, who was also a member of the Supreme Council of Justice, had decided to suspend the three appeal judges on a temporary basis pending a decision from the Council.

5. There were two aspects to the land rights of ethnic minorities. First, the minorities traditionally practised "slash-and-burn" agriculture and therefore moved on every three years in search of new land to cultivate. That practice was not one encouraged by the Government, which was making efforts to help minorities to settle permanently and use manure, for example, to fertilize their land. Secondly, a number of companies were making attempts to establish themselves on land belonging to ethnic minorities, which was forbidden. In cooperation with the United Nations Development Programme (UNDP), the Government had organized a seminar on that issue and had prohibited investments aimed at acquiring land belonging to ethnic minorities.

6. Responding to a question on the case of a deputy who had automatically lost his seat in the National Assembly after being expelled from his party, he said that the decision to withdraw the deputy's mandate had been taken by the National Assembly itself. In Cambodia, one had to be a member of a political party in order to be a deputy and ministers had to be members of a party represented in the National Assembly. There were now three such parties. The deputy in question had been the Minister of Finance; having been expelled from his party, he had automatically been removed from his ministerial office. Furthermore, the party could ask the National Assembly to replace him as deputy with the person on the party list who had obtained the next largest number of votes after him. The deputy concerned had declared his intention to contest the decision and the case was due to come before the Constitutional Council. Only the interested party, however, was able to embark on that step.

7. Mr. OK Vannarith (Cambodia), replying to the questions on violence in the family, said he did not deny that such violence existed in Cambodia, as in other parts of the world. Nevertheless, he believed that Mr. Zakhia had painted an exaggerated picture of the situation.

8. Concerning article 31 of the Constitution, which dealt with the rights and obligations of Cambodian citizens, he pointed out that, in Cambodian tradition, aliens were guests. They therefore enjoyed the same rights as Cambodian citizens, but had no fixed duties under the Constitution, which explained why article 31 made no mention of aliens.

9. In response to the questions on detention, he said that, as far as he was aware, there had been only one case of rape among the 3,500 persons deprived of their liberty, and the director of the establishment concerned had been removed from office following the incident. In addition, prison visits were authorized once a month and not, as had been said, once every two months. Freedom of correspondence was guaranteed to detainees, who could lodge a complaint if they were subjected to violence. He conceded that the wages of 1,000 riels a day received by detainees were quite frugal. However, compared to the amount which a labourer would spend on food, for example, they were far from insubstantial. All prisons had a running water supply. There was undoubtedly room for further improvement on that score, but resources were lacking.

10. He confirmed that some minors were indeed detained in prisons instead of being placed in homes for young offenders. The minors in question, however, were unwelcome to the residents of those homes, who feared for their own safety. It was for that reason that some minors had been placed in detention centres.

11. In reply to the questions asked concerning the freedom of expression in Cambodia, he said that there were 70 press organs, 10 of which were foreign language publications. The press enjoyed immense freedom, which it sometimes abused by making offensive remarks about the royal family, for example. To his knowledge, however, no journalist had ever been placed in detention for his writing. Cambodia had six television channels, one of which was a State channel, and 12 radio stations. The two religious radio stations were both Catholic. Although Buddhism was the State religion, it had no radio station owing to lack of financial resources.

12. Lastly, a question had been asked about the registration of newborn infants. He said that, at the time of the events mentioned, a political party had accused the Government of registering newborn members of alien minorities. The Government and the parties represented in the National Assembly had reached a consensus to put a temporary end to that situation, which nonetheless persisted, as the authorities had no means of monitoring the application of their decisions.

13. Ms. EVATT understood that, in certain circumstances, the Supreme Council of Justice could suspend or invalidate a court decision and wished to know precisely what those circumstances were. She also drew the Cambodian delegation's attention to the fact that the questions asked about violence in the family had arisen as a direct result of what was said in the report (CCPR/C/81/Add.12), particularly in paragraphs 325, 333 and 339.

14. Mr. ZAKHIA, noting that Buddhism was the State religion, inquired about the practical implications of that status for the lives of citizens.

15. Mr. OM Yentieng (Cambodia), returning to the subject of the temporary suspension of three judges ordered by the Minister of Justice, stated that the Minister simply established files for the Supreme Council of Justice, which had the exclusive competence to suspend or remove lawyers. In the case in question, as the Supreme Council of Justice had not fulfilled its mandate, the Minister of Justice had imposed a temporary sanction and the judges concerned should soon be reinstated without any other particular sanctions, following a decision from the Supreme Council of Justice. Admittedly, the action taken by the Minister of Justice was not fully compliant with the law, but it nonetheless tended towards the interests of society. The authorities had a duty to combat the corruption of judges and should also crack down heavily on drug trafficking, which was otherwise likely to increase. Cambodia was simply a transit country for drugs and the authorities wished to ensure that it did not become a producer.

16. Turning to the question of forced marriages, he wished to place marriage in the country's traditional and social context. Within the family, girls held a more important position than boys, as they maintained the home, looked after their parents when they grew old and, generally speaking, were more acquiescent to their parents' views, particularly concerning the choice of husband. On that score, it was extremely rare that a girl would dare to oppose her parents. In Cambodia, the woman was also the dominant member of a couple, as she carried out the domestic chores, raised the children and managed the household budget. An employed husband would hand his salary over to his wife, thereby confiding her with the task of running the domestic finances. In rural areas, it was generally the women who, through their labour, provided financial support for the entire family. In addition, the Government policy aimed at advancing the status of women focused on rural areas, where the practice of granting credit to women for the establishment or management of smallholdings or small enterprises was receiving special encouragement from the authorities. In Cambodia, women decided everything and the mother's opinion concerning a daughter's marriage carried more weight than that of the father. Even so, cases of violence in the family had been recorded, but they were few and far between and the victims were able to seek

justice. Moreover, the National Human Rights Commission planned to confer upon one inhabitant in each of the country's 120,000 villages the role of mediator in family disputes.

17. Mr. OK Vannarith (Cambodia), replying to Mr. Zakhia's question about the implications of the status of Buddhism in Cambodia, pointed out that Buddhism was not only the State religion, but also a religion that fostered human rights in that it extolled wisdom and respect for all living beings.

18. The CHAIRPERSON said that the consideration of the initial report of Cambodia was thus complete. On behalf of the Committee, she wished to thank the Cambodian delegation for its willingness to respond to the questions asked. The Committee was aware of the economic and other difficulties facing the country. The relationship which it had just formed with the State party in considering its initial report was simply intended to help Cambodia to overcome those difficulties in the light of its obligations under the Covenant. It regretted, however, the imprecise replies to the Committee's detailed written questions, as well as the gap between the information provided orally and that contained in the report.

19. Pending publication of the Committee's concluding observations, she briefly reviewed some of the concerns voiced by the Committee members. She first mentioned the problem of impunity and the difficulties involved in trying the perpetrators of genocide. It had emerged from the reply addressed to the Secretary-General by the Cambodian authorities following publication of the report of the Special Representative for human rights in Cambodia (E/CN.4/1999/101) that, in the main, the State party pleaded obstacles inherent to the internal legal order and the danger of the return of the Khmer Rouge with a view to eliminating the possibility of having those responsible for genocide tried by an international criminal tribunal. However, in order to ensure that the country re-established itself on solid ground, it was imperative to rebuild the trust of the Cambodian people. It was only by confronting the past that such an objective could be achieved. In addition, article 51 of the 1994 Law on Civil Servants was incompatible with the Covenant and should be repealed, providing as it did that Government officials (including members of the security forces) could be neither arrested nor prosecuted without the prior approval of the minister to whom they were answerable. Similarly, article 31 of the Constitution, which restricted the enjoyment of human rights to Cambodian citizens alone, conflicted with the provisions of the Covenant.

20. In both the report and the statements made by the delegation, the detrimental effects of traditions on the situation of women, particularly in the fields of education and employment, had been recognized. The representatives of the State party had conceded that women were under-represented in the various decision-making bodies, a problem which they attributed to the composition of the political parties, which had few women members. In the view of the Committee, whatever the reasons for that situation, the State party had a duty to take measures to ensure a balanced representation of men and women. It had further emerged from the discussion that, although prohibited by law, early and forced marriages still existed in practice. In that connection, it was equally incumbent on the State to assume its responsibilities by strictly applying the laws in force. In its replies,

the delegation had played down the seriousness of the problem of violence in the home, thereby contradicting the content of paragraphs 325 and 339 of the report. According to the Cambodian Minister for women's affairs, one woman in every six was a victim of domestic violence. The fact that such women had the right to take their cases to court was insufficient. Rules should be adopted in order to combat the scourge of violence. In particular, social measures should be taken to change the nature of the relations between men and women. The problem of traffic in women and children, together with that of prostitution, was another area in which the State should intervene vigorously.

21. The replies of the Cambodian delegation to the questions concerning torture and the right to life were far from satisfactory. The same applied to the problem of the imprisonment of minors, in which connection the Committee would have liked more explicit information on the practice whereby minors who engaged in prostitution were categorized as delinquents. The main problem noted by the Committee, however, lay in the field of justice. The inadequacies in that regard could not, moreover, be attributed to a mere lack of legal personnel. It had emerged clearly from the State party's report and other information which the Cambodian delegation had not denied that there was interference from the Executive in matters of justice. A sweeping reform of the system was clearly necessary in order to create an independent judiciary that was capable of protecting human rights. In general, tremendous efforts were still needed to ensure that Government officials complied strictly with human rights standards.

22. Lastly, she hoped that the dialogue established between the Committee and the Cambodian delegation had been useful and wished all those engaged in efforts to establish the rule of law in Cambodia every success in the long task ahead of them.

23. Mr. OM Yentieng (Cambodia) thanked all the members of the Committee for their advice and constructive criticisms, which would undoubtedly help the Cambodian authorities in their efforts to establish a democratic society. Thus far, the task had not been easy, but the efforts exerted to that end would be even more effective when peace reigned throughout Cambodia. He hoped that it would be possible to state in forthcoming reports to the Human Rights Committee that the situation had improved considerably.

24. The Cambodian delegation withdrew.

The meeting was suspended at noon and resumed at 12.20 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 5) (continued)

Draft general comment concerning article 12 (CCPR/C/21/Rev.1/Add.9) (continued)

Paragraph 16 (continued)

25. Mr. KLEIN said that he had drafted a new paragraph 16, worded to read: "States have often failed to show that the application of their laws restricting the rights enshrined in article 12, paragraphs 1 and 2, are in conformity with all requirements referred to in article 12, paragraph 3. The

application of restrictions in any individual case must be based on clear legal grounds that meet the necessity test and the requirements of proportionality." He also noted that the Committee had already begun its consideration of paragraph 17.

26. Ms. EVATT fully endorsed the new wording of paragraph 16. However, she would have liked it to include a brief mention of some of the decisions connected with the questions referred to in the paragraph under consideration which the Committee had taken in the context of communications or general comments. On that subject, she noted that, in the past, the Committee had reached the conclusion that its general comments should take account of the lessons learned from the consideration of communications and State party reports. Perhaps there was now an opportunity to put that conclusion into practice.

27. The CHAIRPERSON believed that it was restrictions, rather than legal grounds, which should meet the "necessity test", in which case the second sentence of the paragraph should read: "The application of restrictions in any individual case must be based on clear grounds and meet the necessity test and the requirements of proportionality."

28. Lord COLVILLE supported Ms. Evatt's proposal that the text should mention at least some of the decisions taken by the Committee when considering communications. The guidelines concerning the preparation of reports emphasized the need to refer constantly to the general comments of the Committee. If the text of those comments did not reflect the decisions taken by the Committee, States parties should not be expected to refer to them in their reports.

29. Mr. LALLAH, in the interests of saving time, proposed that Ms. Evatt should present the Committee with a rough draft of what she wished to incorporate in paragraph 16.

30. Mr. Lallah's proposal was approved.

Paragraph 17 (continued)

31. Mr. KLEIN noted that the Committee had made several changes to paragraph 17. In the first sentence, the words "erected against" had been replaced by "unnecessarily affecting". It had also decided to mention the right to take residence in a country. Lastly, in the fifth sentence, after the words "include, inter alia", the phrase "inaccessibility for applicants" had been replaced by the words "the lack of access for applicants".

32. Paragraph 17, as orally amended, was adopted.

Paragraph 18

33. Mr. KLEIN said that paragraph 18 concerned the additional obligation not to violate other rights guaranteed in the Covenant. The paragraph contained several examples of measures impeding the enjoyment of the rights of women to move freely or to leave the country, practices which the Committee had often encountered when considering reports submitted by States parties.

34. The CHAIRPERSON said she did not understand why only some paragraphs contained references to communications considered by the Committee.

35. Mr. KLEIN said that he had deleted all the footnotes contained in his first draft apart from those relating to communications and general comments. However, it was for the Committee to decide whether the references contained in the text should be retained.

36. Mr. POCAR said that he agreed with the substance of paragraph 18 and would therefore confine his comments to some of the finer details. He proposed that the words "provided for", which appeared in the first line, should be replaced by the words "permissible under". In addition, he wondered whether the reference to article 26, which concerned the question of equality before the law, should be retained in the second sentence. Even though that article constituted a clause of the Covenant which prohibited discrimination, it enshrined a specific right. The same did not apply to articles 2 and 3, which referred to all the rights protected under the Covenant. In the third sentence, he proposed deletion of the words "for example", as it was not a matter of an example, but rather one of a general principle. As for listing the grounds for discrimination, he believed that it was preferable to duplicate the words of the Covenant, which were less restrictive. He therefore proposed replacing the words "for reasons of" with the words "for reasons such as". He also suggested abbreviating the fourth sentence by replacing the words "impeding the enjoyment of the rights by women" with the words "preventing women". Lastly, there were grounds for questioning whether the final sentence of the paragraph should instead be included in the following section entitled "The right to enter one's own country". In that same sentence, it would perhaps also be preferable to delete the word "party"; given that the right to return to one's own country was part of general international law, deletion of the word "party" would not alter the meaning of the sentence and would also broaden its scope.

37. Ms. CHANET said that generally she had no objection to the text of paragraph 18. She believed, however, that the emphasis placed on discrimination was unjustified. The restrictions provided for under article 12 should be compatible with all the rights guaranteed by the Covenant, without distinction. She therefore supported the proposal to delete the reference to articles 2 and 26 of the Covenant, unless they were mentioned merely as an example.

38. Mr. KRETZMER proposed the deletion in the penultimate sentence of the words "under article 12, paragraph 1", as no part of that article concerned the right to stay in a country. He agreed with Mr. Pocar that, as currently drafted, the last sentence seemed out of place in the paragraph. It would be necessary to clarify its meaning in order to incorporate it.

39. Mr. KLEIN agreed that the words "the restrictions provided for in article 12, paragraph 3" should be replaced with the words "the restrictions permissible under article 12, paragraph 3" and that the phrase "for example", contained in the third sentence, should be deleted. He also agreed that the wording of the Covenant should be reproduced in introducing the list of the grounds for discrimination. He also approved the version of the fourth sentence proposed by Mr. Pocar. On the other hand, he believed that the Committee should limit itself to the obligations entered into by the States

parties to the Covenant and did not therefore agree that the word "State" should be used in preference to "State party". Similarly, in the penultimate sentence, he preferred to retain the wording "stay under article 12, paragraph 1" in order to bring out clearly the link existing between articles 12 and 13 of the Covenant. Lastly, he was strongly opposed to deletion of the reference to article 26 of the Covenant. Far from being just an example, it was a reference which reflected the Committee's experience; the most frequent violations which it encountered in its work were violations of article 26.

40. Mr. POCAR acknowledged the importance of article 26, but emphasized that the application of restrictions in a manner compatible with the rights guaranteed by the Covenant and their application without discrimination were two distinct things. He added that article 26 guaranteed the equality of all persons before the law. If national legislation was itself discriminatory, article 26 could be violated without any violation of article 12, paragraph 3. Accordingly, the restriction on the enjoyment of the right by women to circulate freely, if it was not contrary to law, did not constitute a violation of article 12, paragraph 3, but was nevertheless a violation of article 26.

41. Ms. EVATT and Mr. LALLAH shared Mr. Pocar's opinion.

42. The CHAIRPERSON proposed that, in order to take account of all the views expressed and resolve the difficulties stated, the first two sentences of paragraph 18 should be amended by combining them into one sentence that would read: "The application of the restrictions permissible under article 12, paragraph 3, needs to be consistent with the other rights guaranteed in the Covenant and with the underlying principle of equality and/or non-discrimination."

43. Ms. CHANET approved the Chairperson's proposal, in which connection she believed that it could be worthwhile to use the version adopted by the Committee in its General Comment 22 on article 18, adapting it to the context of the rights enshrined in article 12 of the Covenant. Paragraph 8 of that General Comment read: "Limitations imposed must be established by law ... Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner." The third sentence of paragraph 18, as orally amended, would then follow.

44. The proposals of the Chairperson and Ms. Chanet were approved.

45. The CHAIRPERSON invited the members of the Committee to examine the last two sentences of paragraph 18.

46. Ms. EVATT proposed that the penultimate sentence should be replaced with the following sentence: "An alien whose right to stay in a State is to be restricted or withdrawn in accordance with article 12, paragraph 3, is entitled to exercise the procedures set out in article 13."

47. Mr. KRETZMER pointed out that an alien did not necessarily have the right to stay in a given country. Like article 13, article 12 referred to

persons, aliens or otherwise, who were "lawfully" in the territory of a State party. What about persons who were unlawfully in the territory of a State party? In that regard, Ms. Evatt's proposal seemed to go beyond the stipulations of articles 12 and 13 of the Covenant.

48. Mr. KLEIN stated that, in the example of that particular case, an alien who claimed to be lawfully in the territory of a State party would nevertheless be threatened with expulsion by the authorities of that State. In that event, the alien in question should essentially be able to invoke in his favour the provisions contained in article 13 of the Covenant.

49. Ms. CHANET said she failed to see the point of the penultimate sentence of paragraph 18. Article 12, paragraph 1, of the Covenant did not refer to the right of any person to be or stay in the territory of a State party, but only to the right to liberty of movement and freedom to choose residence in that territory. Consequently, she did not see how the provisions of that paragraph could refer to an alien who wished to stay in a country and who would be subject to expulsion. In her view, the question of expelling aliens came under article 13 of the Covenant and there was no reason to establish a link between the rights enshrined in article 12 and those enshrined in article 13 of the Covenant.

50. After an exchange of views between Mr. YALDEN, Mr. AMOR, Ms. EVATT and Mr. LALLAH, the CHAIRPERSON said that the last two sentences of draft paragraph 18 would be set aside until the Committee had taken up draft paragraph 21.

Paragraph 19

51. Mr. KRETZMER proposed that the first four sentences of paragraph 19 should be amended to read: "The right of a person to enter his or her own country recognizes the special relationship of a person to that country. This right has various facets. The right to enter implies the right to remain in one's own country. The right to enter includes not only the right to return after having left one's own country. It may also entitle a person to come to a country for the first time if he or she was born outside that country (for example, if that country is that person's State of nationality)."

52. Mr. Kretzmer's proposal was approved.

53. The CHAIRPERSON invited the members of the Committee to consider the last two sentences of paragraph 19.

54. Following an exchange of views in which Mr. YALDEN, Mr. KLEIN, Mr. WIERUSZEWSKI, Mr. AMOR, Ms. EVATT, Lord COLVILLE and the CHAIRPERSON took part, it was decided to retain the penultimate sentence of paragraph 19 and to replace the words "mass displacements" in the last sentence with the words "mass expulsions".

55. Paragraph 19, as orally amended, was adopted.

The meeting rose at 1 p.m.